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IN THIS ISSUE

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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) Volumes 26 and 27 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:
November 10, 2003	December 1, 2003	June 10, 2004	July 1, 2004
December 10, 2003	January 1, 2004	July 9, 2004	August 1, 2004
January 9, 2004	February 1, 2004	August 10, 2004	September 1, 2004
February 10, 2004	March 1, 2004	September 10, 2004	October 1, 2004
March 10, 2004	April 1, 2004	October 12, 2004	November 1, 2004
April 8, 2004	May 1, 2004	November 10, 2004	December 1, 2004
May 10, 2004	June 1, 2004	December 10, 2004	January 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.

State Agencies

ALPHABETICAL LIST

†Agency's rules are repealed, transferred, or otherwise voided.

NUMERICAL LIST

TITLE NUMBER

GENERAL GOVERNMENT

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

TRANSPORTATION AND PUBLIC UTILITIES

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

CORRECTIONS, POLICE, AND MILITARY

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

NATURAL RESOURCES, ENVIRONMENT, AND AGRICULTURE

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

HUMAN SERVICES

405 Office of the Secretary of Family and Social Services
407 Office of the Children's Health Insurance Program
410 Indiana State Department of Health
412 Indiana Health Facilities Council
414 Hospital Council
415 Commission on Forensic Sciences
430 Developmental Disabilities Residential Facilities Council
431 Community Residential Facilities Council
440 Division of Mental Health and Addiction
†450 Department on Aging and Community Services
460 Division of Disability, Aging, and Rehabilitative Services
470 Division of Family and Children
480 Violent Crime Compensation Division
490 Interdepartmental Board for the Coordination of Human Service Programs

TITLE NUMBER

EDUCATION AND LIBRARIES

†510 Commission on General Education
511 Indiana State Board of Education
514 Indiana School for the Deaf Board
515 Professional Standards Board
†520 Commission on Textbook Adoptions
†530 Commission on Teacher Training and Licensing
540 Indiana Education Savings Authority
550 Board of Trustees of the Indiana State Teachers' Retirement Fund
560 Indiana Education Employment Relations Board
570 Indiana Commission on Proprietary Education
†572 Indiana Commission on Vocational and Technical Education
575 State School Bus Committee
580 Indiana Medical and Nursing Distribution Loan Fund Board of Trustees
585 State Student Assistance Commission
590 Indiana Library and Historical Board
595 Library Certification Board

LABOR AND INDUSTRIAL SAFETY

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

BUSINESS, FINANCE, AND INSURANCE

710 Securities Division
750 Department of Financial Institutions
760 Department of Insurance
762 Indiana Political Subdivision Risk Management Commission
770 Indiana Agricultural Development Corporation

OCCUPATIONS AND PROFESSIONS

804 Board of Registration for Architects and Landscape Architects
808 State Boxing Commission
812 Indiana Auctioneer Commission
816 Board of Barber Examiners
820 State Board of Cosmetology Examiners
824 Indiana Grain Buyers and Warehouse Licensing Agency
825 Indiana Grain Indemnity Corporation
828 State Board of Dentistry
830 Indiana Dietitians Certification Board
832 State Board of Funeral and Cemetery Service
836 Indiana Emergency Medical Services Commission
839 Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board
840 Indiana State Board of Health Facility Administrators
844 Medical Licensing Board of Indiana
845 Board of Podiatric Medicine
846 Board of Chiropractic Examiners
848 Indiana State Board of Nursing
852 Indiana Optometry Board
856 Indiana Board of Pharmacy
857 Indiana Optometric Legend Drug Prescription Advisory Committee
858 Controlled Substances Advisory Committee
860 Indiana Plumbing Commission
862 Private Detectives Licensing Board
864 State Board of Registration for Professional Engineers
865 State Board of Registration for Land Surveyors
868 State Psychology Board
872 Indiana Board of Accountancy
876 Indiana Real Estate Commission
880 Speech-Language Pathology and Audiology Board
884 Board of Television and Radio Service Examiners
888 Indiana Board of Veterinary Medical Examiners
†892 Indiana State Board of Examiners in Watch Repairing
896 Board of Environmental Health Specialists
898 Indiana Athletic Trainers Board

MISCELLANEOUS

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

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

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

LSA Document #03-167(F)

DIGEST

Amends 10 IAC 3-1-1 and 10 IAC 3-1-2 relating to and updating the form for filing tort claims against the state. Effective 30 days after filing with the secretary of state.

10 IAC 3-1-1
10 IAC 3-1-2

SECTION 1. 10 IAC 3-1-1 IS AMENDED TO READ AS FOLLOWS:

10 IAC 3-1-1 Tort claims against the state; form

Authority: IC 34-13-3-6
Affected: IC 9-13-2-73; IC 11-10-8; IC 11-12; IC 12-23; IC 20-8.1-5.1-7; IC 34-6-2-38; IC 34-13-3-3; IC 35-33-8; IC 35-46-1-15.1

Sec. 1. (a) A claim for personal injury or property damage against the state of Indiana must be filed on the form prescribed in subsection (b) or be in writing as prescribed under ~~IC 34-4-16.5~~ **IC 34-13-3** and this rule.

(b) Claim Form:

STATE OF INDIANA
CLAIM FOR PERSONAL INJURY OR PROPERTY DAMAGE

* Use additional sheets if necessary *

1. Name of Claimant: _____ Driver's License No.: _____
2. Date and Time of Loss: _____
3. Exact Location of Loss (Include County, Nearest Crossroad, and Town, etc.): _____
4. Dollar Amount of Loss: _____
5. State Agency and State Vehicle Commission Number (If known): _____
6. Names and Addresses of All Persons Involved (If known): _____
7. Address of Claimant at Time of Loss: _____
8. Claimant's Current Address and Work/Home Telephone Numbers: _____
9. How was the State Negligent: _____
10. Explanation of What Happened: _____

I swear and affirm under the penalties for perjury that the foregoing information is true and correct to the best of my knowledge and belief.

Claimant's Signature Date

ATTACH COPIES OF MEDICAL BILLS, ACCIDENT REPORTS, VEHICLE REGISTRATION, PHOTOGRAPHS, TWO ESTIMATES OF REPAIR, OR RECEIPTS FOR REPAIRS TO YOUR PROPERTY, AND ANY ADDITIONAL DOCUMENTATION IN REFERENCE TO THIS MATTER.

Mail this claim form and any attachments by CERTIFIED or REGISTERED mail to:

Office of the Attorney General
Attn: Tort Claims Investigations
IGCS - 5th Floor
402 West Washington Street
Indianapolis, Indiana 46204

NOTICE OF TORT CLAIM FORM
for PROPERTY DAMAGE & PERSONAL INJURY
Provided by the State of Indiana - Office of the Attorney General

Anyone who has a claim for personal injury or property damage against the State of Indiana must either use the following form to file a claim or make the claim in writing as prescribed in Indiana Code ~~34-4-16.5~~ **34-13-3** and these rules.

KEEP A COPY OF YOUR CLAIM FORM, YOUR RECEIPTS FOR YOUR BILLS, AND YOUR CERTIFIED OR REGISTERED MAIL RECEIPT.

If your claim is properly filed, the Office of the Attorney General will investigate it and will notify you in writing within 90 days of receipt if your claim is approved. A claim is denied if not approved within 90 days.

DO NOT DELAY MAKING YOUR CLAIM. INDIANA LAW GIVES YOU ONLY 270 (TWO HUNDRED SEVENTY) DAYS AFTER THE LOSS TO MAKE A CLAIM, AND IT MUST COMPLY WITH Indiana Code ~~34-4-16.5.~~ **34-13-3.** EACH PERSON WHO HAD A LOSS SHOULD FILE A SEPARATE FORM.

The filing of this claim is part of a legal process. If you have any questions about the right way to file a claim, you should contact an attorney of your choice. The state's attorneys are not authorized by law to assist you with filing this claim; however, for your information, the following is a list of actions or conditions resulting in nonliability pursuant to Indiana Code ~~34-4-16.5-3.~~ **34-13-3-3:**

"Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from:

(1) The natural condition of unimproved property.

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose which is not foreseeable.

(3) The temporary condition of a public thoroughfare ~~which~~ **or extreme sport area that** results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

~~(5)~~ **(6)** The initiation of a judicial or an administrative proceeding.

~~(6)~~ **(7)** The performance of a discretionary function; however, the provision of medical or optical care, as provided in IC 34-6-2-38 ~~section 2(b) (IC 34-4-16.5-2(b)) of this chapter,~~ shall be considered to be a ministerial act.

~~(7)~~ **(8)** The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

~~(8)~~ **(9)** An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid, if the employee would not have been liable had the statute been valid.

~~(9)~~ **(10)** The act or omission of anyone other than the governmental entity or the governmental entity's employee.

~~(10)~~ **(11)** The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

~~(11)~~ **(12**) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

~~(12)~~ **(13)** Entry upon any property where the entry is expressly or impliedly authorized by law.

~~(13)~~ **(14)** Misrepresentation if unintentional.

~~(14)~~ **(15)** Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

~~(15)~~ **(16)** Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section ~~6.5 (IC 34-4-16.5-6.5)~~ **7** of this chapter.

~~(16)~~ **(17)** Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, **a pretrial conditional release program under IC 35-33-8,** or a community corrections program under IC 11-12.

~~(17)~~ **(18)** Design of a highway (as defined in IC 9-13-2-73), if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve the responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

~~(18)~~ **(19)** Development, adoption, or implementation, operation, maintenance, or use of an enhanced emergency communication system.

~~(19)~~ **(20)** Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(Office of Attorney General for the State; 10 IAC 3-1-1; filed Jul 1, 1997, 4:15 p.m.: 20 IR 2994; filed Nov 7, 2003, 12:15 p.m.: 27 IR 824)

SECTION 2. 10 IAC 3-1-2 IS AMENDED TO READ AS FOLLOWS:

10 IAC 3-1-2 Claim forms available

Authority: IC 34-13-3-6
Affected: IC 34-13-3

Sec. 2. The **office of the** attorney general will make claims forms available to all state agencies and to all persons who request a claim form. *(Office of Attorney General for the State; 10 IAC 3-1-2; filed Jul 1, 1997, 4:15 p.m.: 20 IR 2996; filed Nov 7, 2003, 12:15 p.m.: 27 IR 825)*

LSA Document #03-167(F)
Notice of Intent Published: 26 IR 3369

Proposed Rule Published: September 1, 2003; 26 IR 3909
Hearing Held: September 23, 2003
Approved by Attorney General: November 3, 2003
Approved by Governor: November 6, 2003
Filed with Secretary of State: November 7, 2003, 12:15 p.m.
Incorporated Documents Filed with Secretary of State: None

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

LSA Document #03-165(F)

DIGEST

Adds 11 IAC 3 relating to the regulation of professional fundraiser consultants and professional solicitors to establish fines on professional fundraiser consultants and solicitors as permitted by IC 23-7-8, define certain terms, and establish requirements for the registration application, the solicitation notice, and the financial report that are filed with the consumer protection division. Effective 30 days after filing with the secretary of state.

11 IAC 3

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

ARTICLE 3. PROFESSIONAL FUNDRAISER CONSULTANTS AND PROFESSIONAL SOLICITORS

Rule 1. Definitions

11 IAC 3-1-1 Applicability
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-1

Sec. 1. Unless otherwise noted, the definitions set forth at IC 23-7-8-1 and this rule apply throughout this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 826)*

11 IAC 3-1-2 "Document" defined
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 2. As used in this article, "document" refers to a registration application, contract, solicitation notice, financial report, or consultant disclosure form. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-2; filed Nov 7, 2003, 12:00 p.m.: 27 IR 826)*

11 IAC 3-1-3 "Information" defined
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 3. As used in this article, "information" refers to:
(1) a document as described in section 2 of this rule;
(2) an amendment as described in 11 IAC 3-2-3; or
(3) any other paperwork required to be filed under IC 23-7-8 or this article.
(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-3; filed Nov 7, 2003, 12:00 p.m.: 27 IR 826)

Rule 2. General Provisions

11 IAC 3-2-1 Filing requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 1. (a) Subject to subsection (b), the filing of information with the division is complete on the earliest of the following dates that apply to the filing:
(1) The date on which the information is delivered to the division.
(2) The date of the postmark on the envelope containing the information if the information is mailed to the division by United States mail.
(3) The date on which the information is deposited with a private carrier, as shown by a receipt issued by the carrier, if the information is sent to the division by private carrier.

(b) Any information required to be filed under IC 23-7-8 shall not be considered filed with the division if the information is incomplete, incorrect, or fails to comply with the requirements of IC 23-7-8 and this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 826)*

11 IAC 3-2-2 Document filing
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 2. The date a document is considered filed is the date the document first meets the requirements of section 1 of this rule. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-2; filed Nov 7, 2003, 12:00 p.m.: 27 IR 826)*

11 IAC 3-2-3 Amendments
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 3. (a) A professional fundraiser consultant or professional solicitor may file an amendment to a registration application, contract, solicitation notice, financial report, or consultant campaign disclosure form.

(b) The amendment becomes a part of the document to which the amendment relates upon filing.

(c) The amendment shall:

(1) clearly indicate that it is an amendment; and
(2) reference the document that it is amending.

(d) The filing of an amendment does not prohibit or restrict the division from initiating any action under IC 23-7-8 or this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-3; filed Nov 7, 2003, 12:00 p.m.: 27 IR 826)*

Rule 3. Registration

11 IAC 3-3-1 Application requirement
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. To comply with the disclosure requirements of IC 23-7-8-2(a), a professional fundraiser consultant or professional solicitor shall complete a registration application as prescribed by the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 827)*

11 IAC 3-3-2 Information and fee required
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 2. A professional fundraiser consultant or professional solicitor shall not be considered registered under IC 23-7-8-2(a) until:
(1) the registration application is filed with the division; and
(2) the correct fee is received by the division.
(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-2; filed Nov 7, 2003, 12:00 p.m.: 27 IR 827)

11 IAC 3-3-3 Requirements for registration update
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 3. (a) A professional fundraiser consultant or professional solicitor who files a registration update under IC 23-7-8-4(c) shall comply with:
(1) IC 23-7-8-2(a); and
(2) this article.

(b) A professional fundraiser consultant or professional solicitor who fails to file a registration update as required by IC 23-7-8-4(c) will be deemed not registered with the division under IC 23-7-8-2(a). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-3; filed Nov 7, 2003, 12:00 p.m.: 27 IR 827)*

11 IAC 3-3-4 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 4. (a) The division may fine a professional fundraiser consultant or professional solicitor up to one hundred dollars ($100) for each month or part of a month after the date on which the registration update and renewal fee were due to be filed under IC 23-7-8-4(c).

(b) If a professional fundraiser consultant or professional solicitor was previously fined by the division under subsection (a), the division may fine the professional fundraiser consultant or professional solicitor up to two hundred dollars ($200) for each month or part of a month after the date on which the registration update and renewal fee are due under IC 23-7-8-4(c). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-4; filed Nov 7, 2003, 12:00 p.m.: 27 IR 827)*

11 IAC 3-3-5 Registration renewals arriving after the renewal year ends
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 5. If a professional fundraiser consultant or professional solicitor has not filed a registration update or paid the renewal fee under IC 23-7-8-4(c) before September 2 of the year the renewal is due, the professional fundraiser consultant or professional solicitor must:
(1) apply for registration under IC 23-7-8-2(a); and
(2) pay the registration fee of one thousand dollars ($1,000) under IC 23-7-8-4(a).
(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-5; filed Nov 7, 2003, 12:00 p.m.: 27 IR 827)

Rule 4. Consultant Contracts

11 IAC 3-4-1 Contract filing requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. Before acting as a professional fundraiser consultant for a charitable organization, the professional fundraiser consultant must file a written contract described under IC 23-7-8-2(c) with the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 827)*

11 IAC 3-4-2 Consultant disclosure form
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. A professional fundraiser consultant may complete a consultant disclosure form as prescribed by the division for each contract the professional fundraiser consultant enters into with a charitable organization. The professional fundraiser consultant shall sign the consultant disclosure form while under oath. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-2; filed Nov 7, 2003, 12:00 p.m.: 27 IR 827)*

11 IAC 3-4-3 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 3. (a) For each contract entered into with a charitable organization, a professional fundraiser consultant who fails to file a contract within the period specified by IC 23-7-8-2(c) may be assessed a fine of up to one hundred dollars ($100) for each month or part of a month after the date on which the consultant begins acting as a professional fundraiser consultant.

(b) If a professional fundraiser consultant was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars ($200) for each month or part of a month after the date on which the consultant begins acting as a professional fundraiser consultant. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-3; filed Nov 7, 2003, 12:00 p.m.: 27 IR 828)*

11 IAC 3-4-4 Campaign starting date
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 4. For purposes of section 3 of this rule, the following applies:
(1) Whenever a professional fundraiser consultant does not submit to the division a consultant disclosure form, the date on which the consultant begins acting as a professional fundraiser consultant is the starting date of the consulting services as stated on the contract.
(2) Whenever a professional fundraiser consultant submits to the division a consultant disclosure form that complies with section 2 of this rule, the date on which the consultant begins acting as a professional fundraiser consultant is the starting date listed on the consultant disclosure form.
(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-4; filed Nov 7, 2003, 12:00 p.m.: 27 IR 828)

Rule 5. Solicitor Contracts

11 IAC 3-5-1 Contract requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. Before a professional solicitor engages in a solicitation, the professional solicitor must file a written contract described under IC 23-7-8-2(d) with the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 828)*

11 IAC 3-5-2 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. (a) For each contract entered into with a charitable organization, a professional solicitor who fails to file a contract within the period specified by IC 23-7-8-2(d) may be assessed a fine of up to one hundred dollars ($100) for each month or part of a month after the date on which the professional solicitor begins soliciting.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars ($200) for each month or part of a month after the date on which the professional solicitor begins soliciting. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-2; filed Nov 7, 2003, 12:00 p.m.: 27 IR 828)*

11 IAC 3-5-3 Campaign starting date
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 3. For purposes of section 2 of this rule and 11 IAC 3-6-2, the date on which the professional solicitor begins soliciting for a charitable organization is considered to be the earlier of:
(1) the date the professional solicitor begins soliciting; or
(2) the date when soliciting began as listed on the solicitation notice under IC 23-7-8-2(e)(2).
(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-3; filed Nov 7, 2003, 12:00 p.m.: 27 IR 828)

Rule 6. Solicitation Notice Filings

11 IAC 3-6-1 Campaign requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. Before a professional solicitor begins a solicitation campaign, the professional solicitor must file a solicitation notice described under IC 23-7-8-2(e) with the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-6-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 828)*

11 IAC 3-6-2 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. (a) A professional solicitor who fails to file a solicitation notice by the beginning date of a solicitation campaign may be assessed a fine of up to one hundred dollars ($100) for each month or part of a month after the beginning date of the solicitation campaign.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars ($200) for each month or part of a month after the beginning date of the solicitation

campaign. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-6-2; filed Nov 7, 2003, 12:00 p.m.: 27 IR 828)*

Rule 7. Financial Reports

11 IAC 3-7-1 Financial report requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. To comply with IC 23-7-8-2(f), a professional solicitor shall complete a financial report as prescribed by the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 829)*

11 IAC 3-7-2 Filing deadlines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. A financial report under IC 23-7-8-2(f) shall be filed with the division not later than ninety (90) days after one (1) of the following occurs:

(1) The ending of a solicitation campaign.

(2) The anniversary of the commencement of a solicitation campaign lasting more than one (1) year.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-2; filed Nov 7, 2003, 12:00 p.m.: 27 IR 829)

11 IAC 3-7-3 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 3. (a) For each financial report, a professional solicitor who fails to file a financial report within the time period prescribed by section 2 of this rule may be assessed a fine of up to one hundred dollars ($100) for each month or part of a month starting from the ninety-first day after one (1) of the following occurs:

(1) The ending of a solicitation campaign.

(2) The anniversary of the commencement of a solicitation campaign lasting more than one (1) year.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars ($200) for each subsequent violation of subsection (a). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-3; filed Nov 7, 2003, 12:00 p.m.: 27 IR 829)*

11 IAC 3-7-4 Campaign starting and ending dates
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 4. (a) For purposes of sections 2 through 3 of this rule, the dates when a solicitation campaign, other than a campaign described in subsection (b), will begin and end are the projected dates when soliciting will begin and end as listed on the solicitation notice under IC 23-7-8-2(e)(2).

(b) If a solicitation campaign ends earlier than the projected date when soliciting will end as listed on the solicitation notice, the professional solicitor shall submit a financial report as described in this rule within ninety (90) days from the actual ending date of the solicitation campaign. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-4; filed Nov 7, 2003, 12:00 p.m.: 27 IR 829)*

Rule 8. Miscellaneous and Penalties

11 IAC 3-8-1 Division's authority not prohibited or restricted
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. (a) This article shall not prohibit or restrict the division from initiating any action authorized under IC 23-7-8 or any other law enforced by the division.

(b) The division may deny or revoke the registration of a professional solicitor who fails to comply with IC 23-7-8-2(f) even if the professional solicitor has not been previously assessed a fine under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 829)*

11 IAC 3-8-2 Fines are in addition to fees
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. A fine under this article is in addition to any fee provided under IC 23-7-8. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-2; filed Nov 7, 2003, 12:00 p.m.: 27 IR 829)*

11 IAC 3-8-3 Administrative Orders and Procedures Act applies
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 4-21.5; IC 23-7-8

Sec. 3. IC 4-21.5 applies to any proceedings under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-3; filed Nov 7, 2003, 12:00 p.m.: 27 IR 829)*

11 IAC 3-8-4 Lack of warning not a defense
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 4. The lack of a warning to a professional fundraiser consultant or professional solicitor that a document submitted by the professional fundraiser consultant or professional solicitor is in any way incomplete, incorrect, or fails to comply with the requirements of IC 23-7-8 or this title is

not a defense to an action by the division under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-4; filed Nov 7, 2003, 12:00 p.m.: 27 IR 829)*

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TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #01-95(F)

DIGEST

Amends 327 IAC 15 concerning storm water run-off associated with construction activity and storm water discharges associated with industrial activity. Repeals 327 IAC 15-5-11. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2001, Indiana Register (24 IR 2243).

Second Notice of Comment Period and Notice of First Hearing: September 1, 2001, Indiana Register (24 IR 4242).

Change in Notice of Public Hearing: November 1, 2001, Indiana Register (25 IR 404).

Change in Notice of Public Hearing: November 1, 2002, Indiana Register (26 IR 416).

Change in Notice of Public Hearing: December 1, 2002, Indiana Register (26 IR 812).

Date of First Hearing: December 11, 2002.

Third Notice of Comment Period and Notice of Second Hearing: February 1, 2003, Indiana Register (26 IR1604).

Change in Notice of Public Hearing: March 1, 2003, Indiana Register (26 IR 1961).

Change in Notice of Public Hearing: April 1, 2003, Indiana Register (26 IR 2392).

Legislative Services Agency Fiscal Impact Statement: April 1, 2003, Indiana Register (26 IR 2489).

Change in Notice of Public Hearing: May 1, 2003, Indiana Register (26 IR 2645).

Date of Second Hearing and Final Adoption: May 8, 2003.

327 IAC 15-2-3
327 IAC 15-2-6
327 IAC 15-2-8
327 IAC 15-2-9
327 IAC 15-3-1
327 IAC 15-3-2
327 IAC 15-3-3
327 IAC 15-5-1
327 IAC 15-5-2
327 IAC 15-5-3
327 IAC 15-5-4
327 IAC 15-5-5
327 IAC 15-5-6
327 IAC 15-5-6.5
327 IAC 15-5-7
327 IAC 15-5-7.5
327 IAC 15-5-8
327 IAC 15-5-10
327 IAC 15-5-11
327 IAC 15-5-12
327 IAC 15-6-1
327 IAC 15-6-2
327 IAC 15-6-4
327 IAC 15-6-5
327 IAC 15-6-6
327 IAC 15-6-7
327 IAC 15-6-7.3
327 IAC 15-6-7.5
327 IAC 15-6-8.5
327 IAC 15-6-9
327 IAC 15-6-10
327 IAC 15-6-11
327 IAC 15-6-12

SECTION 1. 327 IAC 15-2-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-3 NPDES general permit rule applicability requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 3. (a) A general permit rule may regulate all designated categories of point sources for which a general permit rule exists except:

(1) as provided under section 6 or 9 of this rule or the applicable general permit rule; and

(2) point source discharges meeting the applicability requirements of a general permit rule, who are already subject to individual NPDES permits prior to the effective date of a general permit rule.

(b) Persons excluded from general permit rule regulation solely because they have an existing individual NPDES permit may request to be regulated under a general permit rule and may request that the individual NPDES permit be revoked or modified to remove the point source from the existing permit. Upon revocation or expiration of the individual NPDES permit, the general permit rule shall apply to such point source discharges regulated under this article. **This allowance to change from an individual NPDES permit to a general NPDES permit does not apply to municipal separate storm sewer system permittees who were issued an individual NPDES permit before January 1, 2000.**

(c) A person that holds an individual NPDES permit may have discharges regulated under an applicable general permit rule if such discharges are not addressed in the individual permit. *(Water Pollution Control Board; 327 IAC 15-2-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830)*

SECTION 2. 327 IAC 15-2-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-6 Exclusions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 6. **(a) Except as provided in subsection (b),** an individual NPDES permit issued under 327 IAC 5 is required for a discharge to a receiving stream identified as an outstanding state resource water, an exceptional use water, or an outstanding national resource water as defined under 327 IAC 2-1-2(3), 327 IAC 2-1-11(b), or 327 IAC 2-1.5-4 or which would significantly lower the water quality as defined under 327 IAC 5-2-11.3(b)(1) of such a water downstream of the point source discharge.

(b) A discharge to an outstanding national resource water, outstanding state resource water, or exceptional use water may be permitted under 327 IAC 15-5, 327 IAC 15-6, or 327 IAC 15-13 if the commissioner determines the discharge will not significantly lower the water quality as defined under 327 IAC 5-2-11.3(b)(1) of such a water downstream of that point source discharge. *(Water Pollution Control Board; 327 IAC 15-2-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830)*

SECTION 3. 327 IAC 15-2-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-8 Transferability of notification requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 4-22-2; IC 13-11-2; IC 13-18-4

Sec. 8. (a) **Unless other requirements are found within specific rules under this article,** compliance with the NOI letter submission requirements under this article may ~~not~~ be transferred if ~~ownership/operation of a facility is transferred to a new person, that person must submit a NOI letter pursuant to 327 IAC 15-3 or seek coverage under an individual NPDES permit pursuant to 327 IAC 5.~~ **the following occurs:**

(1) The current permittee notifies the commissioner at least thirty (30) days in advance of the proposed transfer date in subdivision (2).

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current permittee and the transferee (including acknowledgment that the existing permittee is liable for violations up to that date and that the transferee is liable for violations from that date on) is submitted to the commissioner.

(3) The transferee certifies in writing to the commissioner intent to operate the facility without making such material and substantial alterations or additions to the facility as would significantly change the nature or quantities of pollutants discharged.

(b) ~~A person who filed a NOI letter under this article and who subsequently was requested by the commissioner to file an application for an individual NPDES permit has one hundred twenty (120) days from the time of the request by the commissioner to file the application.~~ **The commissioner may require that a new NOI letter be submitted rather than agreeing to the transfer of the NOI letter requirements.** *(Water Pollution Control Board; 327 IAC 15-2-8; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; filed Oct 27, 2003, 10:15 a.m.: 27 IR 831)*

SECTION 4. 327 IAC 15-2-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-9 Special requirements for NPDES general permit rule

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 4-21.5; IC 13-11-2; IC 13-18-4

Sec. 9. (a) If a general permit rule is amended, all persons regulated by the affected general permit rule must be notified by first class mail of the amendment by the commissioner. ~~within sixty (60) days after the effective date of the amended rule.~~ Those persons notified by the commissioner under this subsection shall:

(1) apply for an individual NPDES permit under 327 IAC 5-3; ~~within one hundred twenty (120) days after the effective date of the amended rule;~~ or

(2) submit a **complete** NOI letter containing the information required in 327 IAC 15-3-2 and the amended rule;

within ninety (90) days after ~~the effective date of the amended rule.~~ **receipt of the notice from the commissioner.**

(b) The commissioner may require any person either with an existing discharge subject to the requirements of this article or who is proposing a discharge that would otherwise be subject to the requirements of this article to apply for and obtain an individual NPDES permit if one (1) of the six (6) cases listed in this subsection occurs. Interested persons may petition the commissioner to take action under this subsection. Cases where individual NPDES permits may be required include the following:

(1) The applicable requirements contained in this article are not adequate to ensure compliance with:

(A) water quality standards under 327 IAC 2-1 or 327 IAC 2-1.5; or

(B) the provisions that implement water quality standards contained in 327 IAC 5.

(2) The person is not in compliance with the terms and conditions of the general permit rule.

(3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the point source.

(4) Effluent limitations guidelines that are more stringent than the requirements in the general permit rule are subsequently promulgated for point sources regulated by the general permit rule.

(5) A water quality management plan containing more stringent requirements applicable to such point source is approved.

(6) Circumstances have changed since the activity regulated under this article began so that the discharger is no longer appropriately controlled under the general permit rule or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(c) If, under subsection (b), the commissioner requires an individual NPDES permit, pursuant to 327 IAC 5-3, the commissioner shall notify the person in writing that an individual NPDES permit application is required. This notice shall be issued pursuant to IC 4-21.5 and shall also include the following:

(1) A brief statement of the reasons for this decision.

(2) An application form.

(3) A statement setting a time for the person to file the application.

(4) A statement that on the effective date of the individual NPDES permit, the general permit rule, as it applies to the individual person, shall no longer apply.

The commissioner may grant additional time upon request of the applicant for completion of the application.

(d) ~~An operator, as defined in 327 IAC 15-5-4(7), of a storm water discharge~~ **A person having financial responsibility or operational control for a facility, project site, or municipal separate storm sewer system area and the associated storm water discharges,** that meets the applicability requirements of the general permit rule and is not covered by an existing individual NPDES permit, must submit an application under 40 CFR 122.26 as published in the Federal Register on November 16, 1990, and 327 IAC 5-3 if the operator seeks to cover the discharge under an individual permit.

(e) On the effective date of an individual NPDES permit that is issued to a person regulated under this article, this article no longer applies to that person.

(f) Persons with a discharge meeting all the applicability criteria of more than one (1) general permit rule shall comply with all applicable general permit rules. *(Water Pollution Control Board; 327 IAC 15-2-9; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 831)*

SECTION 5. 327 IAC 15-3-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-1 Purpose

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 1. The purpose of this rule is to establish the requirements and procedures for submitting ~~a~~ **an** NOI letter under a general permit rule. **Unless otherwise specified under an applicable general permit rule,** the NOI letter shall be sent to the following address:

Indiana Department of Environmental Management
Office of Water ~~Management~~ **Quality**
~~105 South Meridian Street~~ **100 North Senate Avenue**
P.O. Box 6015
Indianapolis, Indiana 46206
Attention: Permits Section, General Permit Desk

(Water Pollution Control Board; 327 IAC 15-3-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 832)

SECTION 6. 327 IAC 15-3-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-2 Content requirements of a NOI letter

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 2. **Except for permittees covered under 327 IAC 15-5 and 327 IAC 15-13,** the NOI letter shall include the following:

(1) Name, mailing address, and location of the facility for which the notification is submitted.

(2) Standard Industrial Classification (SIC) codes, as defined in 327 IAC 5, up to four (4) digits, that best represent the principal products or activities provided by the facility.

(3) The person's name, address, telephone number, **e-mail address (if available),** ownership status, and status as federal, state, private, public, or other entity.

(4) The latitude and longitude of the approximate center of the facility to the nearest fifteen (15) seconds, ~~or~~ **and, if the section, township, and range are provided,** the nearest quarter section ~~(if the section, township, and range are provided)~~ in which the facility is located.

(5) The name of receiving water or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.

(6) A description of how the facility complies with the applicability requirements of the general permit rule.

(7) Any additional NOI letter information required by the applicable general permit rule.

(8) The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g).

(Water Pollution Control Board; 327 IAC 15-3-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 832)

SECTION 7. 327 IAC 15-3-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-3 Deadline for submittal of a NOI letter; additional requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 3. (a) Any person proposing a new discharge that will be

subject to a general permit rule, except for construction activity under 327 IAC 15-5 **and municipal separate storm sewer system discharges under 327 IAC 15-13,** shall submit ~~a~~ **an** NOI letter and additional information as required by the applicable general permit rule at least one hundred eighty (180) days before the date on which the discharge is to commence unless permission for a later date has been granted by the commissioner or is established in the applicable general permit rule. A construction activity NOI letter shall be submitted in accordance with 327 IAC 15-5-6. **A municipal separate storm sewer system NOI letter shall be submitted in accordance with 327 IAC 15-13-6 and 327 IAC 15-13-9.**

(b) Any person ~~operating~~ **requesting** coverage under a general permit rule with an existing discharge shall submit ~~a~~ **an** NOI letter within ninety (90) days of the effective date of the applicable general permit rule unless permission for a later date has been granted by the commissioner or is established in **327 IAC 15-2-9(a) or** the applicable general permit rule. *(Water Pollution Control Board; 327 IAC 15-3-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 832)*

SECTION 8. 327 IAC 15-5-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-1 Purpose

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 1. The purpose of this rule is to ~~reduce pollutants, principally sediment as a result of soil erosion, in~~ **establish requirements for** storm water discharges ~~into surface waters of the state from sites where construction activity disturbs five (5) acres or more of the site. However, in contemplation of recent federal court decisions, persons with sites greater than one (1) acre but less than five (5) acres are invited to comply with this rule as well.~~ **from construction activities of one (1) acre or more so that the public health, existing water uses, and aquatic biota are protected.** *(Water Pollution Control Board; 327 IAC 15-5-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 833)*

SECTION 9. 327 IAC 15-5-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-2 Applicability of general permit rules

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4; IC 14-34

Sec. 2. **(a)** The requirements under this rule apply to all persons who:

(1) do not obtain an individual NPDES permit under 327 IAC 15-2-6;

(2) meet the general permit rule applicability requirements under 327 IAC 15-2-3; and

(3) are involved in construction activity, ~~which includes clearing, grading, excavation, and other land disturbing activities,~~ except operations that result in the **land** disturbance of less than ~~five (5) acres~~ **one (1) acre** of total land area **as determined under subsection (h)** and ~~which~~ are not part of a larger common plan of development or sale.

(b) The requirements under this rule do not apply to persons who are involved in:

(1) agricultural land disturbing activities; or

(2) forest harvesting activities.

(c) The requirements under this rule do not apply to the following activities, provided other applicable permits contain provisions requiring immediate implementation of soil erosion control measures:

(1) Landfills that have been issued a certification of closure under 329 IAC 10.

(2) Coal mining activities permitted under IC 14-34.

(3) Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the department under 329 IAC 10 that contains equivalent storm water requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.

(d) The project site owner has the following responsibilities:

(1) Complete a sufficient notice of intent letter.

(2) Ensure that a sufficient construction plan is completed and submitted in accordance with section 6 of this rule.

(3) Ensure compliance with this rule during:

(A) the construction activity; and

(B) implementation of the construction plan.

(4) Notify the department with a sufficient notice of termination letter.

(5) Ensure that all persons engaging in construction activities on a permitted project site comply with the applicable requirements of this rule and the approved construction plan.

(e) For off-site construction activities that provide services (for example, road extensions, sewer, water, and other utilities) to a permitted project site, these off-site activity areas must be considered a part of the permitted project site when the activity is under the control of the project site owner.

(f) For an individual lot where land disturbance is expected to be one (1) acre or more and the lot lies within a project site permitted under this rule, the individual lot owner shall:

(1) complete his or her own notice of intent letter; and

(2) ensure that a sufficient construction plan is completed and submitted in accordance with section 6 of this rule.

(g) For an individual lot where the land disturbance is less than one (1) acre and the lot lies within a project site permitted under this rule, the individual lot operator shall be in accordance with the following:

(1) Comply with:

(A) the provisions and requirements of the plan developed by the project site owner; and

(B) section 7.5 of this rule.

(2) Does not need to submit a notice of intent letter and construction plans.

(h) Multilot project sites are regulated by this rule in accordance with the following:

(1) A determination of the area of land disturbance shall be calculated by adding the total area of land disturbance for improvements, such as roads, utilities, or common areas, and the expected total disturbance on each individual lot, as determined by the following:

(A) For a single-family residential project site where the lots are one-half (0.5) acre or more, one-half (0.5) acre of land disturbance must be used as the expected lot disturbance.

(B) For a single-family residential project site where the lots are less than one-half (0.5) acre in size, the total lot must be calculated as being disturbed.

(C) To calculate lot disturbance on all other types of project sites, such as industrial and commercial project sites, the following apply:

(i) Where lots are one (1) acre or greater in size, a minimum of one (1) acre of land disturbance must be calculated as the expected lot disturbance.

(ii) Where the lots are less than one (1) acre in size, the total lot must be calculated as being disturbed.

(2) For purposes of this rule, strip developments:

(A) are considered as one (1) project site; and

(B) must comply with this rule;

unless the total combined disturbance on all individual lots is less than one (1) acre and is not part of a larger common plan of development or sale.

(i) Submittal of a notice of intent and construction plans is not required for construction activities associated with a single-family residential dwelling disturbing less than five (5) acres when the dwelling is not part of a larger common plan of development or sale. Provisions in section 7(b)(1) through 7(b)(5), 7(b)(10) through 7(b)(17), 7(b)(19), and 7(b)(20) of this rule shall be complied with throughout construction activities and until the areas are permanently stabilized.

(j) The department may waive the permit requirements under this rule for construction activities that disturb less than five (5) acres where the waiver applicant determined by the commissioner certifies that:

(1) a total maximum daily load (TMDL) for the pollutants of concern from storm water discharges associated with construction activity indicates that controls on construction site discharges are not needed to protect water quality; or

(2) in receiving waters that do not require a TMDL study, an equivalent analysis demonstrates water quality is not threatened by storm water discharges, and it has been determined that allocations for the pollutants of concern from the construction site discharges are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety.

(Water Pollution Control Board; 327 IAC 15-5-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 833)

SECTION 10. 327 IAC 15-5-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-3 General permit rule boundary

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 3. ~~Facilities existing~~ **This general permit covers all lands** within ~~the boundaries of the state of~~ Indiana. ~~affected by this rule are regulated under this rule.~~ *(Water Pollution Control Board; 327 IAC 15-5-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 834)*

SECTION 11. 327 IAC 15-5-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-4 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 14-32; IC 14-34

Sec. 4. In addition to the definitions contained in ~~IC 13-7-1, IC 13-1-3-1.5,~~ **IC 13-11-2,** 327 IAC 1, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

(1) "Agricultural ~~land use"~~ **conservation practices"** means ~~use of land for the production of animal or plant life, including forestry, pasturing or yarding of livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption.~~ **practices that are constructed on agricultural land for the purposes of controlling soil erosion and sedimentation. These practices include grass waterways, sediment basins, terraces, and grade stabilization structures.**

(2) "Agricultural land disturbing activity" means tillage, planting, cultivation, or harvesting operations for the production of agricultural or nursery vegetative crops. The term also includes pasture renovation and establish-

ment, the construction of agricultural conservation practices, and the installation and maintenance of agricultural drainage tile. For purposes of this rule, the term does not include land disturbing activities for the construction of agricultural related facilities, such as:

(A) barns;

(B) buildings to house livestock;

(C) roads associated with infrastructure;

(D) agricultural waste lagoons and facilities;

(E) lakes and ponds;

(F) wetlands; and

(G) other infrastructure.

(3) "Commissioner" refers to the commissioner of the department of environmental management.

(4) "Construction activity" means land disturbing activities and land disturbing activities associated with the construction of infrastructure and structures. This term does not include routine ditch or road maintenance or minor landscaping projects.

(5) "Construction plan" means a representation of a project site and all activities associated with the project. The plan includes the location of the project site, buildings and other infrastructure, grading activities, schedules for implementation, and other pertinent information related to the project site. A storm water pollution prevention plan is a part of the construction plan.

(6) "Construction site access" means a stabilized stone surface at all points of ingress or egress to a project site for the purpose of capturing and detaining sediment carried by tires of vehicles or other equipment entering or exiting the project site.

(7) "Contractor" or "subcontractor" means an individual or company hired by the project site or individual lot owner, their agent, or the individual lot operator to perform services on the project site.

(8) "Department" refers to the department of environmental management.

(9) "Developer" means:

(A) any person financially responsible for construction activity; or

(B) an owner of property who sells or leases, or offers for sale or lease, any lots in a subdivision.

(10) "DNR-DSC" means the division of soil conservation of the department of natural resources.

~~(2)~~ **(11)** "Erosion" means the detachment and movement of soil, sediment, or rock fragments by water, wind, ice, or gravity.

~~(3)~~ **(12)** "Erosion **and sediment** control measure" means a practice, or a combination of practices, to control erosion and resulting sedimentation. ~~and/or off-site damages.~~

~~(4)~~ **(13)** "Erosion **and sediment** control ~~plan"~~ **system"** means ~~a written description and site plan of pertinent information concerning~~ **the use of appropriate** erosion **and sediment** control measures **to minimize sedimentation by first reducing or eliminating erosion at the source and then, as necessary, trapping sediment to prevent it from being discharged from or within a project site.**

(14) "Final stabilization" means the establishment of permanent vegetative cover or the application of a permanent nonerosive material to areas where all land disturbing activities have been completed and no additional land disturbing activities are planned under the current permit.

(15) "Grading"means the cutting and filling of the land surface to a desired slope or elevation.

(16) "Impervious surface" means surfaces, such as pavement and rooftops, which prevent the infiltration of storm water into the soil.

(17) "Individual building lot" means a single parcel of land within a multiparcel development.

(18) "Individual lot operator" means a contractor or subcontractor working on an individual lot.

(19) "Individual lot owner" means a person who has financial control of construction activities for an individual lot.

~~(5)~~ **(20)** "Land disturbing activity" means any manmade change of the land surface, including removing vegetative cover **that exposes the underlying soil,** excavating, filling, transporting, and grading. ~~In the context of this rule, agricultural land disturbing activities, coal mining activities permitted by the DNR under IC 13-4.1, and active landfills permitted by the Indiana department of environmental management where the permit requires soil erosion control are excluded.~~

~~(6) "Nonagricultural land use" means commercial use of land for the manufacturing and wholesale or retail sale of goods or services, residential or institutional use of land intended primarily to shelter people, highway use of land including lanes, alleys, and streets, and other land uses not included in agricultural land use.~~

(21) "Larger common plan of development or sale" means a plan, undertaken by a single project site owner or a group of project site owners acting in concert, to offer lots for sale or lease; where such land is contiguous, or is known, designated, purchased or advertised as a common unit or by a common name, such land shall be presumed as being offered for sale or lease as part of a larger common plan. The term also includes phased or other construction activity by a single entity for its own use.

(22) "Measurable storm event" means a precipitation event that results in a total measured precipitation accumulation equal to, or greater than, one-half (0.5) inch of rainfall.

(23) "MS4 area" means a land area comprising one (1) or more places that receives coverage under one (1) NPDES storm water permit regulated by 327 IAC 15-13 or 327 IAC 5-4-6(a)(4) and 327 IAC 5-4-6(a)(5).

(24) "MS4 operator" means the person responsible for development, implementation, or enforcement of the minimum control measures for a designated MS4 area regulated under 327 IAC 15-13.

(25) "Municipal separate storm sewer system" or "MS4" has the same meaning set forth at 327 IAC 15-13-5(42).

(26) "Peak discharge" means the maximum rate of flow during a storm, usually in reference to a specific design storm event.

(27) "Permanent stabilization" means the establishment, at a uniform density of seventy percent (70%) across the disturbed area, of vegetative cover or permanent nonerosive material that will ensure the resistance of the soil to erosion, sliding, or other movement.

(28) "Phasing of construction" means sequential development of smaller portions of a large project site, stabilizing each portion before beginning land disturbance on subsequent portions, to minimize exposure of disturbed land to erosion.

(29) "Project site" means the entire area on which construction activity is to be performed.

~~(7) "Operator"~~ **(30) "Project site owner"** means the person required to submit the NOI letter under this article and required to comply with the terms of this rule, **including either of the following:**

(A) A developer.

(B) A person who has financial and operational control of construction activities and project plans and specifications, including the ability to make modifications to those plans and specifications.

~~(8) "Site" means the entire area included in the legal description of the land on which land disturbing activity is to be performed.~~

(31) "Sediment" means solid material (both mineral and organic) that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface.

(32) "Sedimentation" means the settling and accumulation of unconsolidated sediment carried by storm water run-off.

(33) "Soil" means the unconsolidated mineral and organic material on the surface of the earth that serves as the natural medium for the growth of plants.

(34) "Soil and Water Conservation District" or "SWCD" means a political subdivision established under IC 14-32.

(35) "Storm water pollution prevention plan" means a plan developed to minimize the impact of storm water pollutants resulting from construction activities.

(36) "Storm water quality measure" means a practice, or a combination of practices, to control or minimize pollutants associated with storm water run-off.

(37) "Strip development" means a multilot project where building lots front on an existing road.

(38) "Subdivision" means any land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale.

(39) "Temporary stabilization" means the covering of soil to ensure its resistance to erosion, sliding, or other movement. The term includes vegetative cover, anchored mulch, or other nonerosive material applied at a uniform density of seventy percent (70%) across the disturbed area.

(40) "Tracking" means the deposition of soil that is transported from one (1) location to another by tires, tracks of vehicles, or other equipment.

(41) "Trained individual" means an individual who is trained and experienced in the principles of storm water quality, including erosion and sediment control as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make judgments regarding storm water control or treatment and monitoring.

(Water Pollution Control Board; 327 IAC 15-5-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 834)

SECTION 12. 327 IAC 15-5-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-5 Notice of intent letter requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 5. ~~In addition to the NOI letter requirements under 327 IAC 15-3,~~ **(a)** The following information must be submitted by the ~~operator~~ **project site owner** with a **complete** NOI letter under this rule:

(1) Name, mailing address, and location of the project site for which the notification is submitted.

(2) The project site owner's name, address, telephone number, e-mail address (if available), ownership status as federal, state, public, private, or other entity.

(3) Contact person (if different than project site owner), person's name, company name, address, e-mail address (if available), and telephone number.

~~(1)~~ **(4)** A brief description of the construction project, including ~~but not limited to,~~ a statement of the total acreage of the **project** site. **Total acreage claimed in the NOI letter shall be consistent with the acreage covered in the construction plan.**

~~(2)~~ **(5)** Estimated ~~timetable~~ **dates** for ~~land disturbing~~ **initiation and completion of construction** activities. ~~and installation of erosion control measures.~~ **Within forty-eight (48) hours of the initiation of construction activity, the project site owner must notify the commissioner and the appropriate plan reviewing agency of the actual project start date.**

(6) The latitude and longitude of the approximate center of the project site to the nearest fifteen (15) seconds, and the nearest quarter section, township, range, and civil township in which the project site is located.

(7) Total impervious surface area, in square feet, of the final project site including structures, roads, parking lots, and other similar improvements.

~~(3) Statement of~~ **(8)** The number of acres to be involved in ~~land disturbing~~ **the construction** activities.

(9) Proof of publication in a newspaper of general circulation in the affected area that notified the public that a construction activity is to commence, that states, "(Company name, address) is submitting an NOI letter to notify the Indiana Department of Environmental Management of our intent to comply with the requirements under 327 IAC 15-5 to discharge storm water from construction activities for the following project: (name of the construction project, address of the location of the construction project). Run-off from the project site will discharge to (stream(s) receiving the discharge(s)).".

(10) As applicable, a list of all MS4 areas designated under 327 IAC 15-13 within which the project site lies.

~~(4)~~ **(11)** A written certification by the operator that:

(A) the ~~erosion control~~ **storm water quality** measures included in the ~~erosion control~~ **construction** plan comply with the requirements under sections **6.5,** 7, and ~~9~~ **7.5** of this rule and that the **storm water pollution prevention** plan complies with **all** applicable **federal,** state, ~~county, or~~ **and** local ~~erosion control~~ **storm water** requirements;

(B) the ~~erosion control~~ measures **required by section 7 of this rule** will be implemented in accordance with the **storm water pollution prevention** plan;

(C) ~~verification that an appropriate state, county, or local erosion control authority and~~ **if the projected land disturbance is one (1) acre or more,** the **applicable** soil and water conservation district ~~office have~~ **or other entity designated by the department has** been sent a copy of the **construction** plan for review; ~~and~~

(D) storm water quality measures beyond those specified in the storm water pollution prevention plan will be implemented during the life of the permit if necessary to comply with section 7 of this rule; and

~~(D) verification that~~ **(E)** implementation of ~~the erosion control plan~~ **storm water quality measures** will be ~~conducted~~ **inspected** by ~~personnel~~ trained ~~in erosion control practices.~~ **individuals.**

~~(5) Proof of publication in a newspaper of general circulation in the affected area that notified the public that a construction activity under this rule is to commence.~~

(12) The name of receiving water or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.

(13) The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g).

(14) A notification from the SWCD, DNR-DSC, or other entity designated by the department as the reviewing agency indicating that the constructions plans are sufficient to comply with this rule. This requirement may be waived if the project site owner has not received notification from the reviewing agency within the time frame specified in 327 IAC 15-5-6(b)(3).

(b) Send NOI letters to:
Attention: Rule 5 Storm Water Coordinator
Indiana Department of Environmental Management
Office of Water Quality, Urban Wet Weather Section
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

(Water Pollution Control Board; 327 IAC 15-5-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 836)

SECTION 13. 327 IAC 15-5-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-6 Submittal of an NOI letter and construction plans

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 6. **(a) After the project site owner has received notification from the reviewing agency that the construction plans meet the requirements of the rule or the review period outlined in subsection (b)(3) has expired,** all **NOI letter** information required under ~~327 IAC 15-3 and~~ section 5 of this rule shall be submitted to the commissioner **at least forty-eight (48) hours** prior to the initiation of land disturbing activities **at the site. A copy of the completed NOI letter must also be submitted to all SWCDs, or other entity designated by the department, where the land disturbing activities are to occur. If the NOI letter is determined to be deficient, the project site owner must address the deficient items and submit an amended NOI letter to the commissioner at the address specified in section 5 of this rule.**

(b) For a project site where the proposed land disturbance is one (1) acre or more as determined under section 2 of this rule, the following requirements must be met:

(1) A construction plan must be submitted according to the following:

(A) Prior to the initiation of any land disturbing activities.

(B) Sent to the appropriate SWCD or other entity designated by the department for:

(i) review and verification that the plan meets the requirements of the rule; or

(ii) a single coordinated review in accordance with subsection (d)(3) if:

(AA) the construction activity will occur in more than one (1) SWCD; and

(BB) the project site owner has made a request for a single coordinated review.

(2) If the construction plan required by subdivision (1) is determined to be deficient, the SWCD, DNR-DSC, or

other entity designated by the department as the reviewing agency may require modifications, terms, and conditions as necessary to meet the requirements of the rule. The initiation of construction activity following notification by the reviewing agency that the plan does not meet the requirements of the rule is a violation and subject to enforcement action. If notification of a deficient plan is received after the review period outlined in subdivision (3) and following commencement of construction activities, the plans must be modified to meet the requirements of the rule and resubmitted within fourteen (14) days of receipt of the notification of deficient plans.

(3) If the project site owner does not receive notification within twenty-eight (28) days after the plan is received by the reviewing agency stating that the reviewing agency finds the plan is deficient, the project site owner may submit the NOI letter information.

(c) The following apply for a project where construction activity occurs inside a single MS4 area regulated under 327 IAC 15-13:

(1) A copy of the completed NOI letter must be submitted to the appropriate MS4 operators.

(2) The project site owner must comply with all appropriate ordinances and regulations within the MS4 area related to storm water discharges. The MS4 operator ordinance as required by 327 IAC 15-13-15(b) and 327 IAC 15-13-16(b) will be considered to have the same authority as this rule within the regulated MS4 area.

(d) For a project that will occur in more than one (1) jurisdiction, such as an SWCD or regulated MS4 area, the following must be met:

(1) Project site owners of project sites occurring in multiple MS4 areas, but not in nondesignated areas, shall submit the information required in subsection (c) to each appropriate MS4 operator.

(2) Project site owners of project sites occurring in one (1) or more MS4 areas and nondesignated areas shall submit the information required in subsections (a), (b), and (c) to all appropriate MS4 operators, and the SWCD or other entity designated by the department.

(3) Project site owners of project sites occurring in multiple nondesignated areas, but not occurring within an MS4 area, may request a single coordinated review through the DNR-DSC office at the following address:

402 West Washington Street
Room W265
Indianapolis, Indiana 46204.

Upon acceptance of the request, the DNR-DSC will coordinate the plan review with appropriate SWCDs and other entities designated by the department. *(Water Pollution Control Board; 327 IAC 15-5-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 837)*

SECTION 14. 327 IAC 15-5-6.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-5-6.5 Requirements for construction plans

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 6.5. (a) For project sites that do not meet the criteria in subsection (b), the project site owner shall develop a set of construction plans. Storm water quality measures included in the plan must achieve the minimum project site requirements specified in section 7 of this rule. The construction plans must include the following:

(1) Project narrative and supporting documents, including the following information:

(A) An index indicating the location, in the construction plans, of all information required by this subsection.

(B) Description of the nature and purpose of the project.

(C) Legal description of the project site. The description should be to the nearest quarter section, township, and range, and include the civil township.

(D) Soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.

(E) General construction sequence of how the project site will be built, including phases of construction.

(F) Hydrologic Unit Code (14 Digit) available from the United States Geological Survey (USGS).

(G) A reduced plat or project site map showing the lot numbers, lot boundaries, and road layout and names. The reduced map must be legible and submitted on a sheet or sheets no larger than eleven (11) inches by seventeen (17) inches for all phases or sections of the project site.

(H) Identification of any other state or federal water quality permits that are required for construction activities associated with the owner's project site.

(2) Vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads, such as a USGS topographic quadrangle map or county or municipal road map.

(3) An existing project site layout that must include the following information:

(A) Location and name of all wetlands, lakes, and water courses on or adjacent to the project site.

(B) Location of all existing structures on the project site.

(C) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exists.

(D) Soil map of the predominant soil types, as determined by the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) Soil Survey, or an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.

(E) Identification and delineation of vegetative cover, such as grass, weeds, brush, and trees, on the project site.

(F) Land use of all adjacent properties.

(G) Existing topography at a contour interval appropriate to indicate drainage patterns.

(4) Final project site layout, including the following information:

(A) Location of all proposed site improvements, including roads, utilities, lot delineation and identification, proposed structures, and common areas.

(B) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exists.

(C) Proposed final topography at a contour interval appropriate to indicate drainage patterns.

(5) A grading plan, including the following information:

(A) Delineation of all proposed land disturbing activities, including off-site activities that will provide services to the project site.

(B) Location of all soil stockpiles and borrow areas.

(C) Information regarding any off-site borrow, stockpile, or disposal areas that are associated with a project site and under the control of the project site owner.

(D) Existing and proposed topographic information.

(6) A drainage plan, including the following information:

(A) An estimate of the peak discharge, based on the ten (10) year storm event, of the project site for both preconstruction and postconstruction conditions.

(B) Location, size, and dimensions of all storm water drainage systems, such as culverts, storm sewers, and conveyance channels.

(C) Locations where storm water may be directly discharged into ground water, such as abandoned wells or sinkholes. Please note if none exists.

(D) Locations of specific points where storm water discharge will leave the project site.

(E) Name of all receiving waters. If the discharge is to a separate municipal storm sewer, identify the name of the municipal operator and the ultimate receiving water.

(F) Location, size, and dimensions of features, such as permanent retention or detention facilities, including existing or manmade wetlands, used for the purpose of storm water management.

(7) A storm water pollution prevention plan associated with construction activities. The plan must be designed to, at least, meet the requirements of sections 7 and 7.5 of this rule and must include the following:

(A) Location, dimensions, detailed specifications, and construction details of all temporary and permanent storm water quality measures.

(B) Temporary stabilization plans and sequence of implementation.

(C) Permanent stabilization plans and sequence of implementation.

(D) Temporary and permanent stabilization plans shall include the following:

(i) Specifications and application rates for soil amendments and seed mixtures.

(ii) The type and application rate for anchored mulch.

(E) Construction sequence describing the relationship between implementation of storm water quality measures and stages of construction activities.

(F) Self-monitoring program including plan and procedures.

(G) A description of potential pollutant sources associated with the construction activities, which may reasonably be expected to add a significant amount of pollutants to storm water discharges.

(H) Material handling and storage associated with construction activity shall meet the spill prevention and spill response requirements in 327 IAC 2-6.1.

(8) The postconstruction storm water pollution prevention plan. The plan must include the following information:

(A) A description of potential pollutant sources from the proposed land use, which may reasonably be expected to add a significant amount of pollutants to storm water discharges.

(B) Location, dimensions, detailed specifications, and construction details of all postconstruction storm water quality measures.

(C) A description of measures that will be installed to control pollutants in storm water discharges that will occur after construction activities have been completed. Such practices include infiltration of run-off, flow reduction by use of open vegetated swales and natural depressions, buffer strip and riparian zone preservation, filter strip creation, minimization of land disturbance and surface imperviousness, maximization of open space, and storm water retention and detention ponds.

(D) A sequence describing when each postconstruction storm water quality measure will be installed.

(E) Storm water quality measures that will remove or minimize pollutants from storm water run-off.

(F) Storm water quality measures that will be implemented to prevent or minimize adverse impacts to stream and riparian habitat.

(G) A narrative description of the maintenance guidelines for all postconstruction storm water quality measures to facilitate their proper long term function. This narrative description shall be made available to future parties who will assume responsibility for the operation and maintenance of the postconstruction storm water quality measures.

(b) For a single-family residential development consisting of four (4) or fewer lots or a single-family residential strip development where the developer offers for sale or lease

without land improvements, and the project is not part of a larger common plan of development or sale, the project site owner shall develop a set of construction plans containing storm water quality measures which achieve the minimum project site requirements specified in section 7 of this rule. The construction plan must include the following:

(1) Project narrative and supporting documents, including the following information:

(A) An index indicating the location, in the construction plans, of all required items in this subsection.

(B) Description of the nature and purpose of the project.

(C) Legal description of the project site. The description should be to the nearest quarter section, township, and range, and include the civil township.

(D) Soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.

(E) Hydrologic Unit Code (14 Digit) available from the United States Geological Survey (USGS).

(F) Identification of any other state or federal permits that are required for construction activities associated with the project site owner's project site.

(2) Vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads, such as a USGS topographic quadrangle map or county or municipal road map.

(3) A project site layout that must include the following information:

(A) Location and name of all wetlands, lakes, and water courses on or adjacent to the project site.

(B) Location of all existing structures on the project site (if applicable).

(C) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exists.

(D) Soil map of the predominant soil types, as determined by the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) Soil Survey, or an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.

(E) Identification and delineation of vegetative cover, such as grass, weeds, brush, and trees, on the project site.

(F) Land use of all adjacent properties.

(G) Existing and proposed topography at a contour interval appropriate to indicate drainage patterns.

(H) Location of all proposed site improvements, including roads, utilities, lot delineation and identification, and proposed structures.

(4) A storm water pollution prevention plan associated with construction activities. The plan must be designed to, at least, meet the requirements of sections 7 and 7.5 of this rule and must include the following:

(A) Delineation of all proposed land disturbing activities, including off-site activities that will provide services to the project site.

(B) Location of all soil stockpiles and borrow areas.

(C) Location, size, and dimensions of all storm water drainage systems, such as culverts, storm sewers, and conveyance channels.

(D) Locations where storm water may be directly discharged into ground water, such as abandoned wells or sinkholes. Please note if none exist.

(E) Locations of specific points where storm water discharge will leave the project site.

(F) Name of all receiving waters. If the discharge is to a separate municipal storm sewer, identify the name of the municipal operator and the ultimate receiving water.

(G) Location, dimensions, detailed specifications, and construction details of all temporary and permanent storm water quality measures.

(H) Temporary stabilization plans and sequence of implementation of storm water quality measures.

(I) Temporary and permanent stabilization plans shall include the following:

(i) Specifications and application rates for soil amendments and seed mixtures.

(ii) The type and application rate for anchored mulch.

(J) Self-monitoring program plan and procedures.

(c) The SWCD or the DNR-DSC representative or other designated entity may upon finding reasonable cause require modification to the construction plan if it is determined that changes are necessary due to site conditions or project design changes. Revised plans, if requested, must be submitted to the appropriate entity within twenty-one (21) calendar days of a request for a modification. *(Water Pollution Control Board; 327 IAC 15-5-6.5; filed Oct 27, 2003, 10:15 a.m.: 27 IR 838)*

SECTION 15. 327 IAC 15-5-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-7 General requirements for storm water quality control

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 7. (a) ~~The operator shall develop an erosion control plan in accordance with the requirements under this section.~~ **All storm water quality measures and erosion and sediment controls necessary to comply with this rule must be implemented in accordance with the construction plan and sufficient to satisfy subsection (b).**

(b) **A project site owner shall, at least, meet** the following requirements: ~~shall be met on all sites during the period when active land disturbing activities occur:~~

(1) Sediment-laden water which otherwise would flow from the **project** site shall be ~~detained~~ **treated** by erosion **and sediment** control ~~practices~~ **measures** appropriate to minimize sedimentation. ~~in the receiving stream. No storm water shall be discharged from the site in a manner causing erosion in the receiving channel at the point of discharge.~~

(2) Appropriate measures shall be ~~taken by the operator~~ **implemented** to minimize or eliminate wastes or unused building materials, including ~~but not limited to,~~ garbage, debris, cleaning wastes, wastewater, **concrete truck washout,** and other substances from being carried from a **project** site by run-off ~~Proper disposal or management of all~~ **or wind. Identification of areas where concrete truck washout is permissible must be clearly posted at appropriate areas of the site.** Wastes and unused building materials ~~appropriate to the nature of the waste or material, is required.~~ **shall be managed and disposed of in accordance with all applicable statutes and regulations.**

(3) ~~Sediment being tracked from a site onto public or private roadways shall be minimized. This can be accomplished initially by a temporary gravel construction entrance in addition to a well-planned layout of roads, access drives, and parking areas of sufficient width and length, or other appropriate measures.~~ **A stable construction site access shall be provided at all points of construction traffic ingress and egress to the project site.**

(4) Public or private roadways shall be kept cleared of accumulated sediment **that is a result of run-off or tracking.** Bulk clearing of ~~accumulated~~ sediment shall not include flushing the area with water. Cleared sediment shall be ~~returned to the point of likely origin or other suitable location.~~ **redistributed or disposed of in a manner that is in accordance with all applicable statutes and regulations.**

~~(5) All on-site storm drain inlets shall be protected against sedimentation with straw bales, filter fabric, or equivalent barriers meeting accepted design criteria, standards, and specification for that purpose.~~

~~(6) The following items apply during the time the construction activity is taking place:~~

~~(A) Storm water drainage from adjacent areas that naturally pass through the site shall be controlled by diverting it around disturbed areas. Alternatively, the existing channel must be protected and/or improved to prevent erosion or sedimentation from occurring.~~

~~(B) Run-off from a disturbed area shall be controlled by one (1) or more of the following measures:~~

~~(i) Except as prevented by inclement weather conditions or other circumstances beyond the control of the operator, appropriate vegetative practices will be initiated within seven (7) days of the last land disturbing activity at the site regulated by this rule. Appropriate vegetative practices include, but are not limited to, seeding, sodding, mulching, covering, or by other equivalent erosion control measures.~~

~~(ii) The erosion control plan shall be implemented on disturbed areas within the construction site. The plan shall include erosion control measures as appropriate, such as, but not limited to, the following:~~

~~(AA) Sediment detention basins.~~

~~(BB) Sediment control practices, such as filter strips, diversions, straw bales, filter fences, inlet protection measures, slope minimization, phased construction, maximizing tree coverage, temporary and permanent seeding of vegetation, mulching, and sodding.~~

~~All measures involving erosion control practices shall be designed and installed under the guidance of a qualified professional experienced in erosion control and following the specifications and criteria under this subsection. All other nonengineered erosion control measures involving vegetation should be installed according to accepted specifications and criteria under this subsection.~~

(5) Storm water run-off leaving a project site must be discharged in a manner that is consistent with applicable state or federal law.

(6) The project site owner shall post a notice near the main entrance of the project site. For linear project sites, such as a pipeline or highway, the notice must be placed in a publicly accessible location near the project field office. The notice must be maintained in a legible condition and contain the following information:

(A) Copy of the completed NOI letter and the NPDES permit number, where applicable.

(B) Name, company name, telephone number, e-mail address (if available), and address of the project site owner or a local contact person.

(C) Location of the construction plan if the project site does not have an on-site location to store the plan.

(7) This permit and posting of the notice under subdivision (6) does not provide the public with any right to trespass on a project site for any reason, nor does it require that the project site owner allow members of the public access to the project site.

(8) The storm water pollution prevention plan shall serve as a guideline for storm water quality, but should not be interpreted to be the only basis for implementation of storm water quality measures for a project site. The project site owner is responsible for implementing, in accordance with this rule, all measures necessary to adequately prevent polluted storm water run-off.

(9) The project site owner shall inform all general contractors, construction management firms, grading or excavating contractors, utility contractors, and the contractors that have primary oversight on individual building lots of the terms and conditions of this rule and the conditions and standards of the storm water pollution prevention plan and the schedule for proposed implementation.

(10) Phasing of construction activities shall be used, where possible, to minimize disturbance of large areas.

(11) Appropriate measures shall be planned and installed as part of an erosion and sediment control system.
(12) All storm water quality measures must be designed and installed under the guidance of a trained individual.
(13) Collected run-off leaving a project site must be either discharged directly into a well-defined, stable receiving channel or diffused and released to adjacent property without causing an erosion or pollutant problem to the adjacent property owner.
(14) Drainage channels and swales must be designed and adequately protected so that their final gradients and resultant velocities will not cause erosion in the receiving channel or at the outlet.
(15) Natural features, including wetlands and sinkholes, shall be protected from pollutants associated with storm water run-off.
(16) Unvegetated areas that are scheduled or likely to be left inactive for fifteen (15) days or more must be temporarily or permanently stabilized with measures appropriate for the season to minimize erosion potential. Alternative measures to site stabilization are acceptable if the project site owner or their representative can demonstrate they have implemented erosion and sediment control measures adequate to prevent sediment discharge. Vegetated areas with a density of less than seventy percent (70%) shall be restabilized using appropriate methods to minimize the erosion potential.
(17) During the period of construction activities, all storm water quality measures necessary to meet the requirements of this rule shall be maintained in working order.
(18) A self-monitoring program that includes the following must be implemented:
(A) A trained individual shall perform a written evaluation of the project site:
(i) by the end of the next business day following each measurable storm event; and
(ii) at a minimum of one (1) time per week.
(B) The evaluation must address:
(i) the maintenance of existing storm water quality measures to ensure they are functioning properly; and
(ii) identify additional measures necessary to remain in compliance with all applicable statutes and rules.
(C) Written evaluation reports must include:
(i) the name of the individual performing the evaluation;
(ii) the date of the evaluation;
(iii) problems identified at the project site; and
(iv) details of corrective actions recommended and completed.
(D) All evaluation reports for the project site must be made available to the inspecting authority within forty-eight (48) hours of a request.
(19) Proper storage and handling of materials, such as fuels or hazardous wastes, and spill prevention and clean-up measures shall be implemented to minimize the potential for pollutants to contaminate surface or ground water or degrade soil quality.
(20) Final stabilization of a project site is achieved when:
(A) all land disturbing activities have been completed and a uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of seventy percent (70%) has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures have been employed; and
(B) construction projects on land used for agricultural purposes are returned to its preconstruction agricultural use or disturbed areas, not previously used for agricultural production, such as filter strips and areas that are not being returned to their preconstruction agricultural use, meet the final stabilization requirements in clause (A).

~~(c) During the period of construction activity at a site, all erosion control measures necessary to meet the requirements of this rule shall be maintained by the operator.~~

~~(d) All erosion control measures required to comply with this rule shall meet the design criteria, standards, and specifications for erosion control measures established by the department in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the division of soil conservation, Indiana department of natural resources and the Field Office Technical Guide from the Soil Conservation Service. The erosion control plan shall include, but is not limited to, the following:~~
~~(1) A map of the site in adequate detail to show the site and adjacent areas, including the following:~~
~~(A) Site boundaries and adjacent lands which accurately portray the site location.~~
~~(B) Lakes, streams, channels, ditches, wetlands, and other water courses on and adjacent to the site.~~
~~(C) One hundred (100) year floodplains, floodway fringes, and floodways.~~
~~(D) Location of the predominant soil types which may be determined by the United States Department of Agriculture, SCS County Soil Survey, or an equivalent publication, or as determined by a certified professional soil scientist.~~
~~(E) Location and delineation of vegetative cover such as grass, weeds, brush, and trees.~~
~~(F) Location and approximate dimensions of storm water drainage systems and natural drainage patterns on, and immediately adjacent to, the site.~~
~~(G) Locations and approximate dimensions of utilities, structures, roads, highways, and paving.~~
~~(H) Site topography, both existing and planned, at a contour interval appropriate to indicate drainage patterns.~~
~~(I) Potential areas where point source discharges of storm water may enter ground water, if any.~~

~~(2) A plan of final site conditions on the same scale as the existing site map showing the site changes.~~
~~(3) A site construction plan shall include, but is not limited to, the following:~~
~~(A) Locations and approximate dimensions of all proposed land disturbing activities.~~
~~(B) Potential locations of soil stockpiles.~~
~~(C) Locations and approximate dimensions of all erosion control measures necessary to meet the requirements of this rule.~~
~~(D) Schedule of the anticipated initiation and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this rule.~~
~~(E) Provisions, including a schedule, for maintenance of the erosion control measures during construction.~~
~~(F) Where feasible, preserve vegetation that exists on the site prior to the initiation of land disturbing activities.~~

(Water Pollution Control Board; 327 IAC 15-5-7; filed Aug 31, 1992, 5:00 p.m.:16 IR 24; readopted filed Jan 10, 2001, 3:23 p.m.:24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 840)

SECTION 16. 327 IAC 15-5-7.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-5-7.5 General requirements for individual building lots within a permitted project

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 7.5. (a) All storm water quality measures, including erosion and sediment control, necessary to comply with this rule must be implemented in accordance with the plan and sufficient to satisfy subsection (b).

(b) Provisions for erosion and sediment control on individual building lots regulated under the original permit of a project site owner must include the following requirements:

(1) The individual lot operator, whether owning the property or acting as the agent of the property owner, shall be responsible for erosion and sediment control requirements associated with activities on individual lots.

(2) Installation and maintenance of a stable construction site access.

(3) Installation and maintenance of appropriate perimeter erosion and sediment control measures prior to land disturbance.

(4) Sediment discharge and tracking from each lot must be minimized throughout the land disturbing activities on the lot until permanent stabilization has been achieved.

(5) Clean-up of sediment that is either tracked or washed onto roads. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment must be redistributed or disposed of in a manner that is in compliance with all applicable statutes and rules.

(6) Adjacent lots disturbed by an individual lot operator must be repaired and stabilized with temporary or permanent surface stabilization.

(7) For individual residential lots, final stabilization meeting the criteria in section 7(b)(20) of this rule will be achieved when the individual lot operator:

(A) completes final stabilization; or

(B) has installed appropriate erosion and sediment control measures for an individual lot prior to occupation of the home by the homeowner and has informed the homeowner of the requirement for, and benefits of, final stabilization.

(Water Pollution Control Board; 327 IAC 15-5-7.5; filed Oct 27, 2003, 10:15 a.m.: 27 IR 843)

SECTION 17. 327 IAC 15-5-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-8 Project termination

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 8. (a) The ~~operator~~ **project site owner** shall plan an orderly and timely termination of the ~~land disturbing~~ **construction** activities, ~~which shall include the following:~~

~~(1) Allowing the installation of utility lines on the site, whenever practicable, prior to final land grading, seeding, and mulching of the site.~~

~~(2) Implementing erosion control measures which are to remain on the site.~~

~~(b) The commissioner may, subsequent to termination of a project, inspect the site to evaluate the adequacy of the remaining erosion control measures.~~ **including the implementation of storm water quality measures that are to remain on the project site.**

(b) The project site owner shall submit a notice of termination (NOT) letter to the commissioner and a copy to the appropriate SWCD or other designated entity in accordance with the following:

(1) Except as provided in subdivision (2), the project site owner shall submit an NOT letter when the following conditions have been met:

(A) All land disturbing activities, including construction on all building lots, have been completed and the entire site has been stabilized.

(B) All temporary erosion and sediment control measures have been removed.

The NOT letter must contain a verified statement that each of the conditions in this subdivision has been met.

(2) The project site owner may submit an NOT letter to obtain early release from compliance with this rule if the following conditions are met:

(A) The remaining, undeveloped acreage does not exceed five (5) acres, with contiguous areas not to exceed one (1) acre.

(B) A map of the project site, clearly identifying all remaining undeveloped lots, is attached to the NOT letter. The map must be accompanied by a list of names and addresses of individual lot owners or individual lot operators of all undeveloped lots.

(C) All public and common improvements, including infrastructure, have been completed and permanently stabilized and have been transferred to the appropriate local entity.

(D) The remaining acreage does not pose a significant threat to the integrity of the infrastructure, adjacent properties, or water quality.

(E) All permanent storm water quality measures have been implemented and are operational.

(c) ~~Maintenance of the remaining erosion control measures shall be the responsibility of the occupier of the property after the operator has terminated land disturbing activities.~~ **Following acceptance of the NOT letter and written approval from the department for early release under subsection (b), the project site owner shall notify all current individual lot owners and all subsequent individual lot owners of the remaining undeveloped acreage and acreage with construction activity that they are responsible for complying with section 7.5 of this rule. The remaining individual lot owners do not need to submit an NOI letter or NOT letter. The notice must contain a verified statement that each of the conditions in subsection (b)(2) have been met. The notice must also inform the individual lot owners of the requirements to:**

(1) install and maintain appropriate measures to prevent sediment from leaving the individual building lot; and

(2) maintain all erosion and sediment control measures that are to remain on-site as part of the construction plan.

(d) The SWCD, DNR-DSC, other entity designated by the department or a regulated MS4 entity, or the department may inspect the project site to evaluate the adequacy of the remaining storm water quality measures and compliance with the NOT letter requirements. If the inspecting entity finds that the project site owner has sufficiently filed an NOT letter, the entity shall forward notification to the department. Upon receipt of the verified NOT letter by the department and receipt of written approval from the department, the project site owner shall no longer be responsible for compliance with this rule.

(e) After a verified NOT letter has been submitted for a project site, maintenance of the remaining storm water quality measures shall be the responsibility of the individual lot owner or occupier of the property. *(Water Pollution Control Board; 327 IAC 15-5-8; filed Aug 31, 1992, 5:00 p.m.: 16 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 843)*

SECTION 18. 327 IAC 15-5-10 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-10 Inspection and enforcement

Authority: IC 13-13-5-2; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-3-13; IC 13-18-4-1; IC 13-18-4-3
Affected: IC 13-14-10; IC 13-15-7; IC 13-18-3; IC 13-18-4; IC 13-30

Sec. 10. (a) The department or its designated representative may inspect any **project** site involved in ~~land disturbing~~ **construction** activities regulated by this rule at reasonable times. ~~The erosion control plan must be readily accessible for review at the time of the inspection.~~ **The department or its designated representatives may make recommendations to the project site owner or their representative to install appropriate measures beyond those specified in the storm water pollution prevention plan to achieve compliance.**

(b) All persons engaging in ~~land disturbing activity~~ **construction activities** on a **project** site shall be responsible for complying with the ~~soil erosion control~~ **storm water pollution prevention** plan ~~for that site~~ and the provisions of this rule.

(c) The department shall investigate potential violations of this rule to determine which person may be responsible for the violation. The department shall, if appropriate, consider public records of ownership, building permits issued by local units of government, and other relevant information, which may include site inspections, ~~soil erosion control~~ **storm water pollution prevention** plans, notices of intent, and other information related to the specific facts and circumstances of the potential violation. Any person causing or contributing to a violation of any provisions of this rule shall be subject to enforcement and penalty under IC 13-14-10, IC 13-15-7, and IC 13-30.

(d) If remaining ~~erosion control~~ **storm water quality** measures are not properly maintained by the person occupying or owning the property, the department may pursue enforcement against that person for correction of deficiencies under 327 IAC 15-1-4.

(e) Construction plans and supporting documentation associated with the quality assurance plan must be made available to the department or its designated representatives within forty-eight (48) hours of such a request. *(Water Pollution Control Board; 327 IAC 15-5-10; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; filed Mar 23, 2000, 4:15 p.m.: 23 IR 1912; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 844)*

SECTION 19. 327 IAC 15-5-12 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-5-12 Duration of coverage

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 12. (a) A permit issued under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences.

(b) Once the five (5) year permit term duration is reached, a general permit issued under this rule will be considered expired, and, as necessary for construction activity continuation, a new NOI letter would need to be submitted in accordance with subsection (c).

(c) To obtain renewal of coverage under this rule, the information required under sections 5 and 6 of this rule must be submitted to the commissioner ninety (90) days prior to the termination of coverage under this NPDES general permit rule, unless the commissioner determines that a later date is acceptable. Coverage under renewal NOI letters will begin on the date of expiration from the previous five (5) year permit term. *(Water Pollution Control Board; 327 IAC 15-5-12; filed Oct 27, 2003, 10:15 a.m.: 27 IR 844)*

SECTION 20. 327 IAC 15-6-1 IS AMENDED TO READ AS FOLLOWS:

Rule 6. Storm Water Discharges Exposed to Industrial Activity

327 IAC 15-6-1 Purpose

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 1. The purpose of this rule is to establish requirements for ~~point source~~ **storm water** discharges **exposed to industrial activity that are composed entirely** of storm water ~~associated with industrial activity. Storm water discharges associated with construction activity are regulated under rule 5 of this article only.~~ **and allowable nonstorm water so that the public health, existing water uses, and aquatic biota are protected.** *(Water Pollution Control Board; 327 IAC 15-6-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 845)*

SECTION 21. 327 IAC 15-6-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-2 Applicability of the general permit rule for storm water discharges exposed to industrial activity

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 4-21.5; IC 13-12-3-1; IC 13-18-1

Sec. 2. **(a) Except as provided in subsections (c), (d), (e), (f), (g), (h), (i), and (j),** the requirements under this rule apply to all ~~persons who:~~ **facilities that meet the following requirements:**

(1) Are not prohibited from regulation under a NPDES general permit rule under 327 IAC 15-2-6.

(2) Meet the NPDES general permit rule applicability requirements under 327 IAC 15-2-3. ~~and~~

(3) Have not received a conditional no exposure exclusion from storm water permitting under section 12 of this rule.

~~(3)~~ **(4)** Have a new or existing point source discharge composed entirely of storm water ~~associated with~~ **and the following allowable nonstorm water discharges exposed to** industrial activity: ~~except for categories, in effect on February 12, 1992, of facilities that have storm water effluent guidelines for at least one (1) of their subcategories. These categories include:~~

~~(A) cement manufacturing (40 CFR 411);~~
~~(B) feedlots (40 CFR 412);~~
~~(C) fertilizer manufacturing (40 CFR 418);~~
~~(D) petroleum refining (40 CFR 419);~~
~~(E) phosphate manufacturing (40 CFR 422);~~
~~(F) steam electric power generation (40 CFR 423);~~
~~(G) coal mining (40 CFR 434);~~
~~(H) mineral mining and processing (40 CFR 436);~~
~~(I) ore mining and dressing (40 CFR 440); and~~
~~(J) asphalt (40 CFR 443).~~

~~If a facility is classified in one (1) of the subcategories that have storm water effluent guidelines, an individual storm water permit application must be submitted.~~

(A) Discharges from firefighting activities.

(B) Fire hydrant flushings.

(C) Potable water sources, including waterline flushings.

(D) Irrigation drainage.

(E) Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions.

(F) Routine external building washdown that does not use detergents.

(G) Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed, and where detergents are not used.

(H) Uncontaminated ground water or spring water.

(I) Foundation or footing drains where flows are not contaminated with process materials, such as solvents.

(J) Uncontaminated air conditioning or compressor condensate.

(K) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (for example, piped cooling tower blowdown or drains).

(L) Vehicle washwaters where uncontaminated water, without detergents or solvents, is utilized.

(M) Run-off from the use of dust suppressants approved for use by other program areas within the department.

Allowable nonstorm water discharges described under this subdivision may be allowed under this rule provided they have not been identified by the permittee or commissioner as a significant contributor of pollutants to a water

of the state. If an allowable nonstorm water discharge is determined to be a significant contributor of pollutants to a water of the state an individual wastewater permit may be required for the discharge.

(5) Have industrial activities classified by one (1) or more of the following categories:

(A) Facilities classified under the following SIC codes:

(i) 20 (food and kindred products).
(ii) 21 (tobacco products).
(iii) 22 (textile mill products).
(iv) 23 (apparel and other textile products).
(v) 24 (lumber and wood products).
(vi) 25 (furniture and fixtures).
(vii) 26 (paper and allied products).
(viii) 27 (printing and publishing).
(ix) 28 (chemicals and allied products).
(x) 29 (petroleum and coal products).
(xi) 30 (rubber and miscellaneous plastic products).
(xii) 31 (leather and leather products).
(xiii) 32 (stone, clay, and glass products).
(xiv) 33 (primary metal industries).
(xv) 34 (fabricated metal products).
(xvi) 35 (industrial machinery and equipment).
(xvii) 36 (electronic and other electric equipment).
(xviii) 37 (transportation equipment).
(xix) 38 (instruments and related products).
(xx) 39 (miscellaneous manufacturing industries).

(B) Except for those facilities identified in subsection (e), mining operations classified under the following SIC codes:

(i) 10 (metal mining).
(ii) 13 (oil and gas extraction).
(iii) 14 (nonmetallic minerals, except fuels).

(C) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. 6921).**

(D) Except for those facilities identified in subsection (f), landfills, land application sites, open dumps, and transfer stations that receive, or have received, industrial process wastes, as defined in rules of the solid waste management board at 329 IAC 10-2-95, from any of the types of facilities described under this subdivision.

(E) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including those classified under the following SIC codes:

(i) 5015 (motor vehicles parts, used).
(ii) 5093 (scrap and waste materials).

(F) Steam electric power generating facilities except for those facilities identified in subsection (g).

(G) Transportation facilities that have vehicle or aircraft maintenance (including vehicle or aircraft rehabilitation, mechanical repairs, painting, fueling, and lubrication), airport runway or aircraft deicing operations, or industrial equipment cleaning areas and are classified under the following SIC codes:

(i) 40 (railroad transportation).
(ii) 41 (local and interurban passenger transit).
(iii) 42 (trucking and warehousing).
(iv) 43 (United States Postal Service).
(v) 44 (water transportation).
(vi) 45 (transportation by air).

(H) Except for those facilities identified in subsections (i) and (j), treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one million (1,000,000) gallons per day or more, or that are required to have an approved pretreatment program under 40 CFR 403*.**

(I) Distribution facilities limited to the portions of the facility that are involved in the material handling of agricultural chemicals (chemical fertilizers and pesticides) or are otherwise identified under this clause shall comply with the requirements of this rule if the following conditions are met:

(i) Have been notified by the department of a determination that the facility is subject to this rule because review of available information shows that:

(AA) the facility had a discharge of a pollutant; or
(BB) there is a likelihood of a discharge of a pollutant to waters of the state.

A facility that has been notified by the department according to this item that the facility is subject to this rule may exercise its right granted under IC 4-21.5.

(ii) Are involved in the processing, transfer, or storage of agricultural chemicals (chemical fertilizers and pesticides), which meet any of the following storage capacity criteria:

(AA) Fluid bulk fertilizer in undivided quantities in excess of either two thousand five hundred (2,500) gallons for one (1) vessel or seven thousand five hundred (7,500) gallons total for multiple vessels (3 × 2,500 gallon vessels) at a facility.

(BB) Dry bulk fertilizer in undivided quantities exceeding twelve (12) tons.

(CC) Liquid pesticide in undivided quantities in excess of four hundred (400) gallons.

(DD) Dry pesticide in undivided quantities in excess of one hundred (100) pounds and that is in solid form prior to any application or mixing for application and includes formulations, such as dusts, wettable powders, dry flowable powders, and granules.

(J) Facilities engaged in selling fuel or lubricating oils to

the trucking industry, where the facility has on-site vehicle maintenance activities, serves as a truck stop or plaza, and are classified as SIC code 5541 (gasoline service stations). Truck stops and plazas that do not have vehicle maintenance activities and gasoline dispensing facilities, such as automotive service stations, convenience stores, and marinas, are not required to comply with this rule.

(b) When a facility, meeting the applicability requirements of subsection (a), is owned by one (1) person but the regulated industrial activity is conducted by another person, it is the duty of the person conducting the regulated industrial activity to apply for a permit under this rule.

(c) A facility classified in one (1) of the following subcategories of facilities that has storm water effluent guidelines for at least one (1) of its subcategories, in effect on February 12, 1992, shall apply for an individual NPDES storm water permit:

(1) Cement manufacturing (40 CFR 411).
(2) Feedlots (40 CFR 412).
(3) Fertilizer manufacturing (40 CFR 418).
(4) Petroleum refining (40 CFR 419).
(5) Phosphate manufacturing (40 CFR 422).
(6) Steam electric power generation (40 CFR 423).
(7) Coal mining (40 CFR 434).
(8) Mineral mining and processing (40 CFR 436).
(9) Ore mining and dressing (40 CFR 440).
(10) Asphalt (40 CFR 443).

(d) A facility subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Chapter I, Subchapter N* shall apply for an individual NPDES storm water permit.

(e) A sand, gravel, or dimension stone facility classified under SIC code 14 is not subject to this rule if:

(1) it is regulated under a general permit issued under 327 IAC 15-12; and
(2) all the regulated facility's storm water discharges are addressed by the general permit issued under 327 IAC 15-12.

(f) A landfill is not subject to this rule if it has satisfied one (1) or more of the following conditions:

(1) Has completed landfill closure approved by the department.
(2) Is regulated under an individual municipal solid waste landfill permit that:
(A) is issued according to 329 IAC 10; and
(B) includes requirements for addressing the quality of storm water run-off.

(g) Steam electric power generating facilities that are involved in the processing, handling, or storage of coal and associated byproducts are not subject to this rule and must apply for an individual NPDES storm water permit.

(h) Transportation facilities identified by SIC code 5171 (petroleum bulk stations and terminals) are not subject to this rule and shall, if facility conditions meet the rule applicability requirements, obtain permit coverage under 327 IAC 15-9.

(i) Municipal treatment works are not subject to this rule if the treatment works meet the following conditions:

(1) Treat domestic sewage or any other sewage sludge or wastewater.
(2) Have a design flow equal to or greater than one million (1,000,000) gallons per day.
(3) Are considered part of a municipality regulated under 327 IAC 15-13.
(4) Are adequately covered under the requirements of 327 IAC 15-13-17.

(j) Farmland, domestic gardens, or land used for sludge management is not subject to this rule if the following conditions are met:

(1) Sludge is beneficially reused.
(2) The land is not physically located within:
(A) the confines of a municipal treatment works facility; or
(B) areas that are in compliance with Section 405 of the Clean Water Act (33 U.S.C. 1345)**.**

***Copies of the Code of Federal Regulations (CFR) 40 CFR Chapter I, Subchapter N referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

****Copies of the Subtitle C of the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. 6921) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

*****Copies of the Code of Federal Regulations (CFR) 40 CFR 403 referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

******Copies of Section 405 of the Clean Water Act (33**

U.S.C. 1345) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Water Pollution Control Board; 327 IAC 15-6-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; errata, 16 IR 751; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 845)*

SECTION 22. 327 IAC 15-6-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-4 Definitions

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-11-2; IC 13-12-3-1; IC 13-18-1

Sec. 4. In addition to the definitions contained in ~~IC 13-7-1, IC 13-1-3-1.5,~~ **IC 13-11-2,** 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

(1) "Best management practices" or "BMPs" means any of the following measures to prevent or reduce the pollution of waters of the state:

(A) Schedules of activities.

(B) Prohibitions of practice.

(C) Treatment requirements.

(D) Operation and maintenance procedures.

(E) Use of containment facilities.

(F) Other management practices.

BMPs may be employed, for example, to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage, resulting from regulated industrial activities.

(2) "Commissioner" refers to the commissioner of the department of environmental management.

(3) "Concentration" means the mass of any given material present in a unit volume of liquid. Unless otherwise indicated under this rule, concentration values must be expressed in milligrams per liter.

(4) "Deicing operations" means the use of urea, glycol, or other deicing substances to remove ice from aircraft or runways.

(5) "Department" refers to the department of environmental management.

(6) "Discharge of a pollutant" has the meaning set forth in 327 IAC 5-1.5-11.

(7) "Drainage" means the flow patterns of storm water run-off.

(8) "Drainage area" means the surface area draining storm water run-off.

(9) "Facility" means a parcel of land or site, together with all buildings, equipment, structures, and other stationary items that are:

(A) located on a single site or on contiguous or adjacent sites; and

(B) owned or operated by:

(i) the same person; or

(ii) any person that controls, is controlled by, or is under common control with the same person.

(10) "Good housekeeping" means maintaining a clean work environment to reduce or eliminate the potential mobilization of pollutants by storm water.

(11) "Impervious surface" means any surface that prevents storm water from readily infiltrating into the soils.

(12) "Individual NPDES permit" means a NPDES permit issued by the commissioner under 327 IAC 5 to a single facility that contains requirements specific to that individual facility.

(13) "Injection well" means any hole that is deeper than it is wide and through which fluids can enter the ground water. Injection wells are regulated under 40 CFR 145 and 40 CFR 144.

(14) "Material handling activity" means the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product.

~~(1)~~ **(15)** "Measurable storm event" means a precipitation event which results in a total measured precipitation accumulation equal to, or greater than, one-tenth (0.1) inch of rainfall.

(16) "Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains that is:

(A) owned or operated by a federal entity or state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over storm water, including special districts under state law, such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. 1288)* that discharges into waters of the state;

(B) designed or used for collecting or conveying storm water;

(C) not a combined sewer; and

(D) not part of a publicly owned treatment works (POTW) as defined in 40 CFR 122.2.**

(17) "No exposure" means a condition of a facility that exists when all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to precipitation or run-off.

(18) "Nonstructural control measure" means the use of nonphysical best management practices to reduce or eliminate mobilization of pollutants by storm water (for example, sweeping, inspections, training, and preventative maintenance).

(19) "Notice of intent letter" or "NOI letter" means a written notification indicating a facility's intention to

comply with the terms of this rule in lieu of applying for an individual NPDES permit. An NOI letter includes information required under section 5 of this rule.

(20) "Notice of termination letter" or "NOT letter" means a written notification indicating that facility has met the conditions to terminate its permit coverage under this rule.

(21) "Outfall" means the point of discharge from a point source.

(22) "Pervious surface" means a ground surface that readily allows storm water to infiltrate or percolate into the soils.

(23) "Point source" has the meaning set forth in 327 IAC 5-1.5-40.

(24) "Qualified professional" means an individual who is trained and experienced in storm water treatment techniques and related fields as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make sound, professional judgments regarding storm water control or treatment and monitoring, pollutant fate and transport, and drainage planning.

(25) "Qualified storm event" means a discharge resulting from a measurable storm event at least seventy-two (72) hours after the previous measurable storm event. The term does not include discharges of snowmelt.

(26) "Risk identification" means a nonstatistical assessment to determine the potential for storm water to be exposed to pollutants and the facility's subsequent need for additional protection practices and measures.

(27) "Secondary containment structure" means a structure or a part of a structure that prevents or impedes a hazardous material that is released accidentally from entering surface water or ground water.

(28) "SIC code" means the four (4) digit standard industrial classification code applicable to a particular industrial activity in accordance with the Standard Industrial Classification Manual published by the Office of Management and Budget of the Executive Office of the President of the United States.

(29) "Storm water discharge" means the release or flow of storm water from a point source, which enters a water of the state.

~~(2)~~ **(30)** "Storm water discharge ~~associated with~~ **exposed to** industrial activity" means ~~the discharge from any conveyance which is used for collecting and conveying~~ storm water ~~and which is directly related to~~ **discharge that has been exposed to the** manufacturing **and** processing **activities,** or raw materials **or intermediate products** storage areas at an industrial ~~plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122, in effect on February 12, 1992.~~ **facility.** For the categories of industries identified in ~~clauses (A) through (I),~~ **section 2(a)(5) of this rule,** the term includes ~~but is not limited to,~~ **the following:**

(A) Storm water discharges from industrial plant yards.

(B) Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility.

(C) Material handling sites.

(D) Refuse sites.

(E) Sites used for the application or disposal of process wastewaters (as defined ~~at~~ **in** 40 CFR ~~Part~~ 401). ~~in effect on February 12, 1992).~~

(F) Sites used for the storage and maintenance of material handling equipment.

(G) Sites used for residual treatment, storage, or disposal.

(H) Shipping and receiving areas.

(I) Manufacturing buildings.

(J) Storage areas (including tank farms) for raw materials and intermediate and finished products. ~~and~~

(K) Areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. ~~For the categories of industries identified in clause (J), the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. The following facility types are considered to be involved in industrial activity:~~

~~(A) Facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N as referenced in 327 IAC 5-12-3 (except facilities with toxic pollutant effluent standards which are exempted under clause (J)).~~

~~(B) Facilities classified under the following SIC codes:~~

~~(i) 24 (lumber and wood products, except 2434-wood kitchen cabinets).~~

~~(ii) 26 (paper and allied products, except 265-paperboard containers and boxes and 267).~~

~~(iii) 28 (chemicals and allied products, except 283-drugs).~~

~~(iv) 29 (petroleum and coal products).~~

~~(v) 311 (leather tanning and finishing).~~

~~(vi) 32 (stone, clay, and glass products, except 323-products of purchased glass).~~

~~(vii) 33 (primary metal industries).~~

~~(viii) 3441 (fabricated structural metal).~~

~~(ix) 373 (ship and boat building and repairing).~~

(C) Mining operations classified as SIC codes:
(i) 10 (metal mining);
(ii) 11 (anthracite mining);
(iii) 12 (coal mining);
(iv) 13 (oil and gas extraction); and
(v) 14 (nonmetallic minerals, except fuels).
(D) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA as defined in IC 13-7-2-15.
(E) Landfills, land application sites, and open dumps that receive, or have received, any industrial wastes (waste that is received from any of the facilities described under this subdivision) including those that are subject to requirements under Subtitle D of RCRA as defined in IC 13-7-2-15.
(F) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including, but not limited to, those classified as SIC codes:
(i) 5015 (motor vehicles parts, used); and
(ii) 5093 (scrap and waste materials).
(G) Steam electric power generating facilities, including coal handling sites.
(H) Transportation facilities classified as SIC codes:
(i) 40 (railroad transportation);
(ii) 41 (local and interurban passenger transit);
(iii) 42 (trucking and warehousing, except 4221-25);
(iv) 43 (United States Postal Service);
(v) 44 (water transportation);
(vi) 45 (transportation by air); and
(vii) 5171 (petroleum bulk stations and terminals);
which have vehicle maintenance, solvent based industrial equipment cleaning, or airport de-icing areas. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), solvent based industrial equipment cleaning operations, airport de-icing operations, or which are otherwise identified under this subsection are associated with industrial activity.
(I) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one (1.0) million gallons per day or more, or that are required to have an approved pretreatment program under 40 CFR 403. Not included is farmland, domestic gardens, or land used for sludge management where sludge is beneficially reused, and which is not physically located in the confines of the facility or areas that are in compliance with the Federal Act.
(J) Facilities classified under the following SIC codes:
(i) 20 (food and kindred products).
(ii) 21 (tobacco products).
(iii) 22 (textile mill products).
(iv) 23 (apparel and other textile products).
(v) 2434 (wood kitchen cabinets).
(vi) 25 (furniture and fixtures).
(vii) 265 (paperboard containers and boxes).
(viii) 267.
(ix) 27 (printing and publishing).
(x) 283 (drugs).
(xi) 285 (paints, varnishes, lacquers, enamels, and allied products).
(xii) 30 (rubber and miscellaneous plastic products).
(xiii) 31 (leather and leather products, except 311).
(xiv) 323 (products of purchased glass).
(xv) 34 (fabricated metal products, except 3441).
(xvi) 35 (industrial machinery and equipment).
(xvii) 36 (electronic and other electric equipment).
(xviii) 37 (transportation equipment, except 373).
(xix) 38 (instruments and related products).
(xx) 39 (miscellaneous manufacturing industries).
(xxi) 4221 (farm product warehousing and storage).
(xxii) 4222 (refrigerated warehousing and storage).
(xxiii) 4223.
(xxiv) 4224 (household goods warehousing and storage).
(xxv) 4225 (general warehousing and storage);
which are not otherwise included under clauses (B) through (I) only need to apply for regulation under this rule when storm water is potentially exposed to industrial activity.

(31) "Storm water pollution prevention plan" or "SWP3" means a written document that addresses storm water run-off pollution prevention for a specific industrial facility.

(32) "Structural control measure" means a physical structure designed to reduce or eliminate the mobilization of pollutants by storm water, for example, detention structures, berming, and vegetated swales.

***Copies of Section 208 of the Clean Water Act (33 U.S.C. 1288) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

****Copies of the Code of Federal Regulations (CFR) 40 CFR 122.2 referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Water Pollution Control Board; 327 IAC 15-6-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 27; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 848)*

SECTION 23. 327 IAC 15-6-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-5 Additional NOI letter requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 5. In addition to the NOI letter requirements under 327 IAC 15-3, the following information must be submitted with the NOI letter under this rule:

(1) Name of responsible corporate officer ~~and/or~~ **or** written authorization for an alternate ~~person~~ **individual** or position to act as the duly authorized representative for that ~~person,~~ **individual,** if appropriate, who will be responsible for all signatory responsibilities for the facility under 327 IAC 15-4-3(g).

(2) ~~Identification of the number and location of each point source discharge of storm water associated with industrial activity and the corresponding industrial activity associated with the drainage area of each point source discharge.~~ **Name and contact information of the individual who can provide assistance with information pertaining to the facility's permit.**

(3) A brief narrative description of the industrial processes performed at the facility.

(4) Identification of the number and location of each outfall where storm water exposed to industrial activity discharges to a water of the state, including a narrative description of the industrial activity associated with the drainage area of each identified outfall.

~~(3)~~ **(5)** Identification of substantially similar ~~point source discharges~~ **outfalls** of storm water ~~on the site,~~ **identified in subdivision (4)** and ~~if appropriate,~~ the outfall to be monitored as representative of all such ~~discharge points. Also, explain~~ **discharges. Include an explanation of** the rationale used to identify why certain ~~point sources~~ **outfalls** are similar.

(6) The identification of past and present NPDES permits, if applicable.

(7) The identification of the regulated MS4 entity receiving the storm water discharge, if applicable.

(8) Proof of publication of the following statement in the newspaper of largest circulation in the area of the discharge: "(Facility name, address, address of the location of the discharging facility, and the stream(s) receiving the discharge(s)) is submitting an NOI letter to notify the Indiana Department of Environmental Management of our intent to comply with the requirements under 327 IAC 15-6 to discharge storm water exposed to industrial activities.".

(Water Pollution Control Board; 327 IAC 15-6-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 28; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 851)

SECTION 24. 327 IAC 15-6-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-6 Deadline for submittal of an NOI letter; additional information

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 6. All information required under 327 IAC 15-3 and section 5 of this rule shall be submitted to the commissioner in accordance with 327 IAC 15-3-3. ~~except, for persons that operate under 327 IAC 15-5 and that are affected by this rule,~~ **For newly constructed industrial facilities,** the NOI letter shall be submitted ~~one hundred eighty (180)~~ **ninety (90)** days ~~before completion of construction.~~ **prior to start up of industrial operations. For existing industrial facilities regulated by this rule, the NOI letter must be submitted in accordance with 327 IAC 15-2-9. For existing industrial facilities that have not been regulated by this rule but now meet the applicability requirements of this rule, the NOI letter must be submitted within ninety (90) days of the effective date of this rule unless permission for a later date has been granted by the commissioner.** *(Water Pollution Control Board; 327 IAC 15-6-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 28; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 851)*

SECTION 25. 327 IAC 15-6-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-7 General requirements for a storm water pollution prevention plan (SWP3)

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 7. (a) The person **having financial responsibility or operational control for a facility** regulated under this rule shall develop ~~a storm water pollution prevention plan which:~~ **implement, update, and maintain a SWP3 that:**

(1) identifies potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges ~~associated with~~ **exposed to** industrial activity from the facility;

(2) describes practices **and measures** to be used in reducing the potential for pollutants to be exposed to storm water; ~~and~~

(3) assures compliance with the terms and conditions of this rule;

(4) lists, by position title, the member or members of a facility storm water pollution prevention team, who will be responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision; and

(5) clearly identifies the responsibilities of each storm water pollution prevention team member.

(b) ~~For each area of the plant that generates~~ **The SWP3 must include a map and description of all areas of the facility that generate** storm water discharges ~~associated with~~ **exposed to**

industrial activity ~~with~~ **and have** a reasonable potential for ~~containing significant amounts of~~ **storm water to be exposed to** pollutants. **As** a **minimum, the** plan shall contain the following:

(1) A ~~description of potential pollutant sources as follows:~~ **copy of the complete NOI letter.**

~~(A) The plan must provide a description of areas on the site reasonably expected to be sources which add significant amounts of pollutants to storm water discharges such as areas used for the following:~~

~~(i) Loading or unloading of dry bulk materials or liquids.~~

~~(ii) Outdoor storage of raw materials, intermediary products, or final products, or waste products.~~

~~(iii) Outdoor process activities.~~

~~(iv) Dust or particulate generating processes.~~

~~(v) Unauthorized connections or management practices.~~

~~(vi) Waste disposal practices.~~

~~(vii) Areas upon which pesticides are applied.~~

~~(B) To provide such a description, the plan shall include, at a minimum, the following items:~~

~~(i) A site map indicating, at a minimum, the following:~~

~~(AA) Each drainage and discharge conveyance and outline of the drainage area of each storm water outfall.~~

~~(BB) Paved areas and buildings within the drainage area of each discharge point.~~

~~(CC) Each past or present area used for outdoor storage or disposal of significant materials.~~

~~(DD) Each existing structural control measure to reduce pollutants in storm water run-off.~~

~~(EE) Materials loading and access areas.~~

~~(FF) Each hazardous waste treatment, storage, or disposal facility, including each area not required to have a RCRA permit which is used for accumulating hazardous waste as defined in 327 IAC 5-1-2 under 40 CFR 262.34 as adopted in 329 IAC 3-14-3.~~

~~(GG) Each well where fluids from the facility are injected underground.~~

~~(HH) Springs and wetlands.~~

~~(II) Other surface water bodies.~~

~~(JJ) Soil types.~~

~~(KK) Existing and proposed underground storage tanks.~~

~~(LL) Snow dumping sites, if any.~~

~~(ii) An estimate of the area of impervious surfaces, including paved areas and building roofs, relative to the total area drained by each outfall.~~

~~(iii) A topographic map, or other if a topographic map is unavailable, extending one-fourth (1/4) of a mile beyond the property boundaries of the facility, depicting the facility and each of its intake and discharge structures, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. This item may be included in the site map required under item (i).~~

~~(iv) A narrative description of the following:~~

~~(AA) Significant materials that in the three (3) years prior to the submittal of the NOI letter have been treated, stored, or disposed on-site in a manner to allow exposure to storm water.~~

~~(BB) Method of treatment, storage, or disposal.~~

~~(CC) Past and present materials management practices employed to minimize contact of these materials with storm water run-off.~~

~~(DD) Materials loading and access areas.~~

~~(EE) The location and description of existing structural and nonstructural control measures to reduce pollutants in storm water run-off.~~

~~(FF) A description of any treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge.~~

~~(v) A list of significant spills and leaks of toxic pollutants or hazardous substances as defined in 327 IAC 5-1-2 that occurred at the facility within three (3) years prior to the submittal of the NOI letter. Such list shall be updated within ninety (90) days from when a significant spill or leak of toxic pollutants or hazardous substances occurs and shall include a description of the materials released, an estimate of the volume of the release, the location of the release, and a description of any remediation or cleanup measures taken.~~

~~(vi) For each area of the plant that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an estimate of the types of pollutants which could be present in storm water discharges associated with industrial activity.~~

~~(vii) A summary of existing sampling data describing pollutants in storm water discharges.~~

~~(2) The facility shall be operated and maintained in such a manner that exposure of storm water to potential sources of significant pollutant material is minimized. To accomplish such an operation and maintenance program, the person shall develop management controls of storm water discharge/run-off appropriate for the facility and implement such controls. The storm water management controls shall include, at a minimum, the following components:~~

~~(A) A risk identification/assessment and material inventory which evaluates the potential for various areas of the plant to contribute pollutants to the storm water discharge by exposing the storm water to industrial activity. Such assessment and inventory shall consider factors such as the following:~~

~~(i) An inventory of the types of materials handled, the location of material handling activities, and types of material management activities.~~

~~(ii) Identification of the toxicity of chemicals utilized at the facility as well as the quantity of such chemicals used, produced, or discharged.~~

~~(iii) A history of significant leaks or spills of pollutants known to have occurred.~~

~~(B) A preventative maintenance program which includes routine inspection and maintenance of storm water management devices.~~

~~(C) A spill prevention and response program which identifies areas where potential spills can occur and their accompanying drainage points, and that minimizes the potential for spills to occur. The program shall include, at a minimum, procedures for the following:~~

~~(i) Proper spill response and clean-up.~~

~~(ii) Reporting a spill to the appropriate facility personnel and, if appropriate, local/state emergency response personnel.~~

~~(iii) Routine maintenance and inspection of spill response/cleanup materials and equipment.~~

~~(D) An exposure reduction assessment which identifies the potential to eliminate/reduce storm water exposure in areas identified above as having a risk of exposing the storm water to significant pollutants and appropriate procedures to accomplish such elimination/reduction.~~

~~(E) A schedule for implementing procedures as identified under clause (D).~~

~~(F) Certify that storm water discharges from the site have been evaluated for the presence of nonstorm water.~~

(2) A soils map indicating the types of soils found on the facility property and showing the boundaries of the facility property outlined in a contrasting color. If a facility's property only has impervious surfaces, the soils map requirement can be omitted.

(3) A graphical representation, such as aerial photographs or site layout maps, drawn to an appropriate scale, which contains a legend and compass coordinates, indicating, at a minimum, the following:

(A) All on-site storm water drainage and discharge conveyances, which may include pipes, ditches, swales, and erosion channels, related to a storm water discharge.

(B) Known adjacent property drainage and discharge conveyances, if directly associated with run-off from the facility.

(C) All on-site and known adjacent property waterbodies, including wetlands and springs.

(D) An outline of the drainage area for each storm water outfall.

(E) An outline of the facility property indicating directional flows, via arrows, of surface drainage patterns.

(F) An outline of impervious surfaces, which includes pavement and buildings, and an estimate of the impervious and pervious surface square footage for each drainage area placed in a map legend.

(G) On-site injection wells, as applicable.

(H) On-site wells used as potable water sources, as applicable.

(I) All existing structural control measures to reduce pollutants in storm water run-off.

(J) All existing and historical underground or above-ground storage tank locations, as applicable.

(K) All permanently designated plowed or dumped snow storage locations.

(L) All loading and unloading areas for solid and liquid bulk materials.

(M) All existing and historical outdoor storage areas for raw materials, intermediary products, final products, and waste materials.

(N) All existing or historical outdoor storage areas for fuels, processing equipment, and other containerized materials, for example, in drums and totes.

(O) Outdoor processing areas.

(P) Dust or particulate generating process areas.

(Q) Outdoor waste storage or disposal areas.

(R) Pesticide or herbicide application areas.

(S) Vehicular access roads.

The on-site mapping of items listed in clauses (J) through (S) is required only in those areas that generate storm water discharges exposed to industrial activity and have a reasonable potential for storm water exposure to pollutants. The mapping of historical locations is only required if the historical locations have a reasonable potential for storm water exposure to historical pollutants.

(4) An area map that indicates:

(A) the topographic relief or similar elevations to determine surface drainage patterns;

(B) the facility boundaries outlined in a contrasting color;

(C) all receiving waters; and

(D) all known drinking water wells;

and includes, at a minimum, the features in clauses (A), (C), and (D) within a one-fourth (¼) mile radius beyond the property boundaries of the facility. This map must be to scale and include legend and compass coordinates.

(5) A narrative description of areas that generate storm water discharges exposed to industrial activity and have a reasonable potential for storm water exposure to pollutants, including descriptions for any existing or historical areas listed in subdivision (3)(J) through (3)(S), and any other areas thought to generate storm water discharges exposed to industrial activity and be a reasonable potential source of storm water exposure to pollutants. The narrative descriptions for each identified area must include the following:

(A) Type and typical quantity of materials present in the area.

(B) Methods of storage, including presence of any secondary containment measures.

(C) Any remedial actions undertaken in the area to eliminate pollutant sources or exposure of storm water to those sources. If a corrective action plan was developed, the type of remedial action and plan date shall be referenced.

(D) Any significant release or spill history dating back a period of three (3) years from the date of the initial NOI letter, in the identified area, for materials spilled outside of secondary containment structures and impervious surfaces in excess of their reportable quantity, including the following:

(i) The date and type of material released or spilled.

(ii) The estimated volume released or spilled.

(iii) A description of the remedial actions undertaken, including disposal or treatment.

Depending on the adequacy or completeness of the remedial actions, the spill history shall be used to determine additional pollutant sources that may be exposed to storm water. In subsequent permit terms, the history shall date back for a period of five (5) years from the date of the NOI letter.

(E) Where the chemicals or materials have the potential to be exposed to storm water discharges, the descriptions for each identified area must include a risk identification analysis of chemicals or materials stored or used within the area. The analysis must include the following:

(i) Toxicity data of chemicals or materials used within the area, referencing appropriate material safety data sheet information locations.

(ii) The frequency and typical quantity of listed chemicals or materials to be stored within the area.

(iii) Potential ways in which storm water discharges may be exposed to listed chemicals and materials.

(iv) The likelihood of the listed chemicals and materials to come into contact with storm water.

(6) A narrative description of existing and planned management practices and measures to improve the quality of storm water run-off entering a water of the state. Descriptions must be created for existing or historical areas listed in subdivision (3)(J) through (3)(S) and any other areas thought to generate storm water discharges exposed to industrial activity and be a potential source of storm water exposure to pollutants. The description must include the following:

(A) Any existing or planned structural and nonstructural control practices and measures.

(B) Any treatment the storm water receives prior to leaving the facility property or entering a water of the state.

(C) The ultimate disposal of any solid or fluid wastes collected in structural control measures other than by discharge.

(7) If applicable, the specific control practices and measures for potential pollutant source areas must include the following:

(A) Identification of areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion and identify and implement measures to limit erosion.

(B) A plan to cover, or otherwise reduce the potential for pollutants in storm water discharge from, deicing salt and sand or other commercial or industrial material storage piles, except for exposure resulting from the addition or removal of materials from the pile. For piles that do not have the potential for polluting storm water run-off, the plan needs to provide the basis for determining no exposure potential. The plan must be included in the SWP3.

(C) Storage piles of sand and salt or other commercial or industrial materials must be stored in a manner to reduce the potential for polluted storm water run-off and in accordance with the plan required under clause (B).

(8) Information or other documentation required under subsection (d).

(9) The results of monitoring required in section 7.3 of this rule. The monitoring data must include completed field data sheets, chain-of-custody forms, and laboratory results. If the monitoring data is not placed into the facility's SWP3, the on-site location for storage of the information must be referenced in the SWP3. As two (2) or more sample monitoring events are completed, the laboratory results must be compared to indicate water quality improvements in the run-off from the facility. If the parameters and sample type are identical, historical storm water monitoring data at each discharge outfall identified in section 5(4) of this rule, or representative discharge outfall identified in section 5(5) of this rule, can be used in the comparison to provide data that is more reflective of initial water quality conditions.

(10) A mapped or narrative description of any such management practice or measure pursuant to subsection (c)(4) must be added to the SWP3.

(c) For areas of the facility that generate storm water discharges and have a reasonable potential for storm water exposure to pollutants, storm water exposure to pollutants must be minimized. To ensure this reduction, the following practices and measures must be planned and implemented:

(1) A written preventative maintenance program, including the following:

(A) Implementation of good housekeeping practices to ensure the facility will be operated in a clean and orderly manner and that pollutants will not have the potential to be exposed to storm water via vehicular tracking or other means.

(B) Maintenance of storm water management measures, for example, catch basins or the cleaning of oil or water separators. All maintenance must be documented and either contained in, or have the on-site record keeping location referenced in, the SWP3.

(C) Inspection and testing of facility equipment and systems that are in areas of the facility that generate storm water discharges and have a reasonable potential

for storm water exposure to pollutants to ensure appropriate maintenance of such equipment and systems and to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

(D) At a minimum, quarterly inspections of the storm water management measures and storm water run-off conveyances. Inspections must be documented and either contained in, or have the on-site record keeping location referenced in, the SWP3.

(E) An employee training program to inform personnel at all levels of responsibility that have the potential to engage in industrial activities that impact storm water quality of the components and goals of the SWP3. Training must occur at a minimum annually and should address topics such as spill response, good housekeeping, and material management practices. All employee training sessions, including relevant storm water topics discussed and a roster of attendees, must be documented and either contained in, or have the on-site record keeping location referenced in, the SWP3.

(2) A written spill response program, including the following:

(A) Location, description, and quantity of all response materials and equipment.

(B) Response procedures for facility personnel to respond to a release.

(C) Contact information for reporting spills, both for facility staff and external emergency response entities.

(3) A written nonstorm water assessment, including the following:

(A) A certification letter stating that storm water discharges entering a water of the state have been evaluated for the presence of illicit discharges and nonstorm water contributions.

(B) Detergent or solvent-based washing of equipment or vehicles that would allow washwater additives to enter any storm drainage system or receiving water shall not be allowed at the facility.

(C) All interior maintenance area floor drains with the potential for maintenance fluids or other materials to enter storm sewers must be either sealed, connected to a sanitary sewer with prior authorization, or appropriately permitted under the NPDES wastewater program pursuant to 327 IAC 5. The sealing, sanitary sewer connecting, or permitting of drains under this item must be documented in the written nonstorm water assessment program.

(D) The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during the test.

(4) If parameter reductions are not indicated in the comparison conducted under subsection (b)(9) and they cannot be attributed to laboratory error or significant variability in the rainfall events, the source of the pollutant parameter must be investigated and either eliminated or reduced via a management practice or measure to the extent technologically practicable and cost beneficial. A lack of reduction does not, in and of itself, constitute a violation of this permit. However, insufficient reductions may be used to identify facilities that would be more appropriately covered under an individual storm water NPDES permit. If parameter concentrations are at, or below, laboratory detection limitations, further reductions are not necessary.

~~(c)~~ **(d) The SWP3 must meet the following** general requirements: ~~of a storm water pollution prevention plan shall include the following:~~

(1) The plan shall be certified by a qualified professional.

(2) The plan shall be retained ~~on-site~~ **at the facility** and be available for review by a representative of the commissioner upon request **or, in the case of a storm water discharge exposed to industrial activity which discharges through a regulated municipal separate storm sewer system conveyance, by the operator or operators of the regulated municipal system.**

(3) ~~A schedule shall be included with the plan which allows for compliance with the terms of~~ The plan **must be completed and implemented** on or before three hundred sixty-five (365) days after submission of ~~the~~ **a timely-submitted initial** NOI letter or ~~in the case of new facilities, prior to initiation of operation at the facility.~~ **the expiration date of the previous five (5) year permit term.** The commissioner may grant an extension of this time frame based on a request by the person showing reasonable cause.

(4) The person ~~regulated under this rule~~ **having financial responsibility or operational control for a facility** shall ~~report once per quarter its progress in developing and implementing the plan. Once the plan is completed and implemented, the reports may cease. The reports shall be sent to:~~

~~Indiana Department of Environmental Management~~
~~Permits Section~~
~~Office of Water Management~~
~~105 South Meridian Street~~
~~P.O. Box 6015~~
~~Indianapolis, Indiana 46206-6015~~

complete and submit to the commissioner a storm water pollution prevention plan certification checklist form within thirty (30) days of the plan completion date, but no later than three hundred sixty-five (365) days after the submission of a timely-submitted initial NOI letter or the expiration date of the previous five (5) year permit term. This checklist must also be signed by a qualified professional.

(5) ~~The person~~ **A permittee** regulated under this rule shall amend the plan **by either of the following:**

(A) Whenever there is a change in design, construction,

operation, or maintenance at the facility, which may have a significant effect on the potential for the discharge of pollutants to surface waters of the state. ~~or~~

(B) Upon written notice by the commissioner that the ~~storm water pollution prevention plan~~ **SWP3** proves to be ineffective in ~~achieving the general objectives of~~ controlling pollutants in storm water discharges ~~associated with~~ **exposed to** industrial activity. **Within sixty (60) days of such notification from the commissioner, the permittee shall make the required changes to the SWP3 and shall submit the amended plan to the commissioner for review.**

(6) If a permittee has other written plans, required under applicable federal or state law, such as operation and maintenance, spill prevention control and countermeasures, or risk contingency plans, which fulfill certain requirements of a SWP3, these plans may be referenced, at the permittee's discretion, in the appropriate sections of the SWP3 to meet those section requirements.

(7) A permittee may combine the requirements of the SWP3 with another written plan if:

(A) the plan is retained at the facility and available for review;

(B) all the requirements of the SWP3 are contained within the plan; and

(C) a separate, labeled section is utilized in the plan for the SWP3 requirements.

~~(d) Monitoring and reporting requirements shall be as follows:~~

~~(1) Each discharge outfall, or representative discharge outfall, composed entirely of storm water run-off, shall be monitored as follows:~~

~~Parameter~~	~~Units~~	~~Sample Type~~
~~Oil and grease~~	~~mg/l~~	~~grab~~
~~CBOD5~~	~~mg/l~~	~~grab and composite~~
~~COD~~	~~mg/l~~	~~grab and composite~~
~~TSS~~	~~mg/l~~	~~grab and composite~~
~~TKN~~	~~mg/l~~	~~grab and composite~~
~~T. phosphorous~~	~~mg/l~~	~~grab and composite~~
~~pH~~	~~s.u.~~	~~grab~~
~~Nitrate plus nitrite nitrogen~~	~~mg/l~~	~~grab and composite~~

~~(2) For those facilities subject to Federal Categorical Effluent Guidelines (40 CFR Subchapter N, in effect on February 12, 1992); Sara Title III facilities subject to report releases into the environment of chemicals which are classified as section 313 water priority chemicals used at the plant in the previous reporting year and which are reasonably expected to be in the discharge; or an individual NPDES permit for process discharge, those parameters required under these programs which are not listed in this subsection shall also be monitored and sampled by grab and composite, except cyanide, hexavalent chromium and volatile organic compounds, which shall be sampled by the grab sample method.~~

~~(3) Prior to implementation of the storm water pollution prevention plan, the person regulated under this rule shall sample and analyze the discharge from the outfall(s) regulated by this rule. During the second year of regulation under this rule, after implementation of the storm water pollution prevention plan, the person shall sample and analyze the discharge from the outfall(s) regulated under this rule for two (2) precipitation events. No further physical sampling is required unless the facility is notified to perform additional physical sampling by Indiana department of environmental management. During the third through the fifth year of regulation under this rule, visual inspections of each outfall or representative outfall as identified in the NOI letter shall be performed for two (2) storm events each year with results recorded and reported annually to the permits section. Visual inspections shall report the presence of turbidity, color, foam, solids, floatables, and an oil sheen.~~

~~(4) A grab sample shall consist of at least one hundred (100) milliliters collected during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge. The grab sample shall be analyzed separately from the composite sample. A composite sample shall consist of a flow or time-weighted sample, either by the time interval between each aliquot or by the volume of aliquot proportionate to the discharge flow at the time of sampling or the total discharge flow since collection of the previous aliquot. A composite sample shall be taken during a minimum of the first three (3) hours of a storm event.~~

~~(5) There shall be a minimum of three (3) months between reported sampling events.~~

~~(6) Samples taken in compliance with the monitoring requirements under subdivision (4) shall be taken at a point representative of the discharge but prior to entry into surface waters of the state of Indiana or a municipal separate storm sewer.~~

~~(7) Sampling type for discharges from a retention basin with a minimum twenty-four (24) hour detention capacity, or, for coal mines, ten (10) hour detention, shall be a grab sample for all parameters. Such a grab shall be taken within the first thirty (30) minutes of discharge from the pond after initiation of a storm event.~~

~~(8) All samples shall be collected from a discharge resulting from a measurable storm event at least seventy-two (72) hours from the previous measurable storm event and, where feasible, where the duration and total precipitation does not exceed fifty percent (50%) from the average or median precipitation event in the area, as determined by the nearest United States National Weather Service Information Center. Documentation of weather conditions that prevent sampling as described in this subsection must be provided to the commissioner.~~

~~(9) The analytical and sampling methods used shall conform to the current version of 40 CFR 136 as referenced in 327 IAC 5-2-13(c)(1).~~

~~(10) Samples and measurements taken as required under this subsection shall be representative of the volume and nature of the monitored discharge.~~

~~(e) Analysis shall be performed in accordance with 40 CFR 136, in effect on February 12, 1992, for quality assurance and quality control.~~

~~(f) Reporting requirements shall be as follows:~~
~~(1) All samples shall be reported as a value of concentration. Concentration is defined as the mass of any given material present in a unit volume of liquid. Unless otherwise indicated under this rule, concentration values shall be expressed in milligrams per liter.~~
~~(2) For each measurement or sample taken pursuant to the requirements of this rule, the facility shall record the following information:~~
~~(A) The exact place, date, and time of sampling.~~
~~(B) The person who performed the sampling or measurements.~~
~~(C) The dates the analyses were performed.~~
~~(D) The person who performed the analyses.~~
~~(E) The analytical techniques or methods used.~~
~~(F) The results of all required analyses and measurements.~~
~~(3) All records and information resulting from the monitoring activities required under this rule, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for a minimum of three (3) years. In cases where the original records are kept at another location, a copy of all such records shall be kept at the facility. The three (3) year period shall be extended:~~
~~(A) automatically during the course of any unresolved litigation regarding the discharge of pollutants by the facility or regarding promulgated effluent guidelines applicable to the facility; or~~
~~(B) as requested by the regional administrator or the Indiana department of environmental management.~~
~~(4) The person regulated under this rule shall submit an annual report to the Indiana department of environmental management containing results obtained during the previous year and shall be postmarked no later than the twenty-eighth day of January each year. The regional administrator may request the person to submit monitoring reports to the EPA if it is deemed necessary to assure compliance with the applicable general permit rule.~~
~~(5) Persons regulated under this rule who have a discharge regulated under this rule which enters a municipal separate storm sewer shall also submit a copy of the discharge monitoring report required under subsection (d) to the operator of the municipal system in accordance with the requirements under subsection (d).~~
~~(6) If the person regulated under this rule monitors any pollutant at the location designated in this section more frequently than required under this rule, using approved analytical methods as specified in this subsection, the results of such monitoring shall be reported as additional information in the annual report. Such increased frequency shall also be indicated in the report.~~

(Water Pollution Control Board; 327 IAC 15-6-7; filed Aug 31, 1992, 5:00 p.m.: 16 IR 28; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 851)

SECTION 26. 327 IAC 15-6-7.3 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-7.3 Monitoring requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 7.3. (a) Monitoring requirements shall be as follows: (1) Each discharge outfall identified in section 5(4) of this rule, or representative discharge outfall identified in section 5(5) of this rule, composed entirely of storm water and allowable nonstorm water run-off, shall be monitored as follows:

Parameter	Units	Sample Type	Frequency
Oil and grease	mg/l	grab	Annual
$CBOD_5$ (Carbonaceous biochemical oxygen demand)	mg/l	grab	Annual
COD (Chemical oxygen demand)	mg/l	grab	Annual
TSS (Total suspended solids)	mg/l	grab	Annual
TKN (Total Kjeldahl nitrogen)	mg/l	grab	Annual
Total phosphorous	mg/l	grab	Annual
pH	s.u.	grab	Annual
Nitrate plus nitrite nitrogen	mg/l	grab	Annual

(2) Each discharge outfall subject to subdivision (1) shall be monitored for any pollutant attributable to a facility's industrial activity which is reasonably expected to be present in the discharge, as well as for any other pollutant that has the potential to be present in a storm water discharge as requested by the commissioner.
(3) Within one (1) year of the original or renewal NOI letter submittal and prior to implementation of the SWP3, a permittee regulated under this rule shall sample and analyze the discharge from the outfall identified in the approved NOI letter. The monitoring data taken from this first year event shall be used by the permittee as an aid in developing and implementing the SWP3. Subsequent annual sampling data shall be used to verify the effectiveness of the SWP3 and will aid the permittee with revising the SWP3 and implementation of additional BMPs, as necessary.

(4) The commissioner may require a permittee to sample additional storm events beyond the required five (5) annual events upon finding reasonable cause. The commissioner shall notify the facility in writing that additional sampling is required.
(5) A grab sample must be collected during the first thirty (30) minutes of discharge at the storm water outfalls identified in the NOI letter or as soon thereafter as practicable.
(6) The pH measurement must be taken at the time the grab sample is collected and by using a pH meter that has been properly calibrated according to manufacturer's specifications and provides results displayed in numeric units. A color comparison analysis for pH is not acceptable.
(7) There shall be a minimum of three (3) months between reported sampling events.
(8) Samples must be taken at a point representative of the discharge but prior to entry into surface waters of the state or a municipal separate storm sewer conveyance unless an alternative location has been granted by the commissioner. For discharges that flow through on-site detention basins, samples shall be taken at a point representative of the discharge from the basin.
(9) All samples must be collected from a discharge resulting from a measurable storm event at least seventy-two (72) hours from the previous measurable storm event. Documentation of weather conditions that prevent sampling as described in this subsection must be provided to the commissioner.
(10) The analytical and sampling methods used must meet the requirements of 327 IAC 5-2-13(d)(1) and 327 IAC 5-2-13(d)(2) for quality assurance and quality control.
(11) Run-off events resulting from snow or ice melt should not be sampled and shall not be used to meet the minimum annual monitoring requirements.

(b) Reporting requirements shall be as follows:
(1) All samples must be reported as a value of concentration or loading.
(2) For each measurement or sample taken under this rule, the permittee shall record and submit the following information to the commissioner:
(A) The exact place, date, and time of the start of the discharge, the duration of the storm event sampled, a measurement of the rainfall in inches, and time of sampling.
(B) The duration between the storm event sampled and the end of the previous measurable storm event.
(C) The individual who performed the sampling or measurements.
(D) The dates the analyses were performed.
(E) The individual who performed the analyses.
(F) The analytical techniques or methods used.
(G) The results of all required analyses and measurements.
(H) A complete copy of the laboratory report, including chain-of-custody.
(3) All records and information resulting from the monitoring activities required under this rule, including all records of analyses performed and calibration and maintenance of instrumentation, must be retained for a minimum of either one (1) year following the date on an NOT letter, three (3) years following the expiration of the facility's permit, or longer if requested by the commissioner. As applicable, the records for calibration and maintenance of instrumentation can be maintained at an off-site laboratory but must be available to the commissioner upon request. All calibration and maintenance records for on-site instruments, such as pH meters, used by a facility for compliance with this rule must be documented and either contained in, or have the on-site record keeping location referenced in, the SWP3.
(4) A permittee regulated under this rule shall submit sampling data results to the commissioner at the address specified in section 8.5 of this rule within thirty (30) days after laboratory analyses have been completed.
(5) A permittee regulated under this rule that has a discharge that enters a regulated municipal separate storm sewer conveyance shall also submit a copy of the sampling data results to the operator of the regulated municipal system conveyance upon request.
(6) If a permittee regulated under this rule monitors a pollutant more frequently than required under this rule, using analytical methods referenced in subsection (a)(10), the results of such monitoring must be reported as additional information in the annual report. Such increased frequency must also be indicated in the report.

(Water Pollution Control Board; 327 IAC 15-6-7.3; filed Oct 27, 2003, 10:15 a.m.: 27 IR 857)

SECTION 27. 327 IAC 15-6-7.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-7.5 Annual reports
Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 7.5. A permittee regulated under this rule shall submit an annual report to the commissioner that contains the following information:
(1) Any changes to the original NOI letter.
(2) Any changes to the facility, the facility's operations or industrial activities.
(3) During the second through fifth years of permit coverage, a copy of the comparison of all sampling data results included in the facility's SWP3 and required under section 7(b)(9) of this rule.
(4) Any additional BMPs implemented, or corrective measures taken, as a result of sampling data results.
The annual report must contain information obtained during the previous year of regulation and be submitted

initially no later than three hundred sixty-five (365) days from the initial NOI submittal date or the expiration date of the previous five (5) year permit term. Subsequent annual report submittals shall be provided no later than three hundred sixty-five (365) days from the previous report in years two (2) through five (5). *(Water Pollution Control Board; 327 IAC 15-6-7.5; filed Oct 27, 2003, 10:15 a.m.: 27 IR 858)*

SECTION 28. 327 IAC 15-6-8.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-8.5 Permit compliance schedule
Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 8.5. The following compliance schedule must be followed:

Permit Compliance Schedule

To apply for coverage	**Submit a completed NOI letter**
1st year of permit coverage	**Submit results of sampling data**
	Develop and implement the SWP3
	Submit SWP3 certification checklist
	Submit annual report
2nd year of permit coverage	**Submit results of sampling data**
	Submit annual report
3rd year of permit coverage	**Submit results of sampling data**
	Submit annual report
4th year of permit coverage	**Submit results of sampling data**
	Submit annual report
5th year of permit coverage	**Submit results of sampling data**
	Submit annual report
90 days before permit expires	**Resubmit a completed NOI letter**
Permit renewals	**Repeat annual sampling schedule**
	Submit SWP3 certification checklist during the first year of renewal coverage only if substantial changes have been made on site or to the plan since its inception
	Submit annual reports

The compliance schedule begins from the date on the initial NOI letter submittal or the expiration date of the previous five (5) year permit term. All submittals to the commissioner must be sent to:

Attention: Rule 6 Storm Water Coordinator
Indiana Department of Environmental Management
Office of Water Quality
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

(Water Pollution Control Board; 327 IAC 15-6-8.5; filed Oct 27, 2003, 10:15 a.m.: 27 IR 859)

SECTION 29. 327 IAC 15-6-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-9 Inspection and enforcement
Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-14-10; IC 13-15-7; IC 13-18-1; IC 13-30

Sec. 9. (a) The commissioner ~~and/or~~ **or** designated representative may inspect any facility regulated under this rule at any time. The storm water pollution prevention plan **as required by section 7 of this rule** and monitoring records **as required by section 7.3 of this rule** must be available on-site for review by the commissioner. **The department or its designated representatives may make recommendations to the facility owner or its representative to install appropriate measures beyond those specified in the storm water pollution prevention plan to achieve compliance.**

(b) The department shall investigate potential violations of this rule to determine which person may be responsible for the violation. The department shall, if appropriate, consider public records of ownership and other relevant information, which may include site inspections, storm water pollution prevention plans, notices of intent, contracts, and other information, related to the specific facts and circumstances of the potential violation.

~~(b)~~ **(c)** Any person ~~violating~~ **causing or contributing to a violation of** any provision of this rule shall be subject to enforcement and penalty as set forth under ~~327 IAC 15-1-4.~~ **IC 13-14-10, IC 13-15-7, and IC 13-30.** *(Water Pollution Control Board; 327 IAC 15-6-9; filed Aug 31, 1992, 5:00 p.m.: 16 IR 32; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 859)*

SECTION 30. 327 IAC 15-6-10 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-10 Duration of coverage and renewal
Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 10. A permit issued under this rule is valid for a period of five (5) years from the date that the commissioner receives an original NOI letter. To obtain renewal of

coverage under this rule, the information required under 327 IAC 15-3 and section 5 of this rule must be submitted to the commissioner ninety (90) days prior to the expiration of coverage under this rule unless the commissioner determines that a later date is acceptable. Coverage under renewal NOI letters will begin on the date of expiration from the previous five (5) year permit. *(Water Pollution Control Board; 327 IAC 15-6-10; filed Oct 27, 2003, 10:15 a.m.: 27 IR 859)*

SECTION 31. 327 IAC 15-6-11 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-11 Termination of coverage; permit not transferable

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-12-3-1; IC 13-18-1

Sec. 11. (a) A complete, state-issued NOT letter request form shall be submitted by a permittee regulated under this rule to the commissioner for any of the following:

(1) Closure of the facility.

(2) Transfer of ownership or operator.

(3) No exposure of all facility industrial activities to storm water.

(4) All storm water run-off from the facility flows into a combined sewer system.

(5) Storm water does not have the potential to impact a water of the state.

(b) A permittee regulated under this rule shall submit a complete, state-issued NOT letter request form to the commissioner upon closure of the facility or upon transfer of ownership or operator as defined in 327 IAC 15-2-8 within thirty (30) days of the date of closure or transfer. The new owner or operator must submit a new NOI letter within sixty (60) days of the date of closure or transfer.

(c) For a permittee to claim termination based on no exposure to industrial activities, a complete "No Exposure Certification" form referenced in section 12 of this rule must be submitted with the NOT letter request form.

(d) For a permittee to claim termination based on all storm water run-off flowing into a combined sewer system, a certification letter from the responsible party of the combined sewer system, on responsible party letterhead, shall be submitted with the NOT letter request form.

(e) The completed NOT request form will be reviewed by the commissioner within sixty (60) days of the submittal date. During this sixty (60) day review period, the permit shall remain effective. Once the review is complete, one (1) of the following may occur:

(1) An NOT letter will be mailed to the requester.

(2) An on-site verification inspection will be requested.

(3) The NOT request will be denied.

If the permittee does not receive any of the above notifications within sixty (60) days of the NOT request submittal, the NOT request will be considered adequate.

(f) An NOT letter may be issued by the commissioner if:

(1) effluent standards and limitations are promulgated for discharges subject to this rule; or

(2) it is determined that a general permit is not adequate to protect water quality.

When a general permit is not adequate, an individual NPDES storm water permit will be issued. *(Water Pollution Control Board; 327 IAC 15-6-11; filed Oct 27, 2003, 10:15 a.m.: 27 IR 860)*

SECTION 32. 327 IAC 15-6-12 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-12 Conditional no exposure exclusion

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4
Affected: IC 13-11-2; IC 13-12-3-1; IC 13-18-1

Sec. 12. (a) In addition to the definitions contained in IC 13-11-2, 327 IAC 5, 327 IAC 15-1-2, and section 4 of this rule, the following definitions apply throughout this section:

(1) "Adequately maintained vehicle" means a vehicle (truck, automobile, forklift, trailer, or other general purpose vehicle) found on facility property that is not industrial machinery and not leaking or otherwise a potential source of contaminants.

(2) "Final product" means a product that is not used in producing other products and is built and intended for use outdoors, provided the final product has not deteriorated or has otherwise become a potential source of contaminants.

(3) "Industrial materials and activities" means:

(A) material handling equipment or activities;

(B) industrial machinery;

(C) raw materials, intermediate products, byproducts, and final products; or

(D) waste products.

(4) "Intermediate product" means a product that is used in the composition of yet another product.

(5) "Material handling activity" means the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term does not include activities conducted on facility property separate from the facility's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the included areas.

(6) "Sealed container" means a container that has been banded or otherwise secured, without operational taps or valves, provided the container is not deteriorated and does not leak.

(7) "Storm-resistant shelter" means a completely roofed and walled building or structure, as well as a structure with only a top cover but no side coverings, provided material under the structure is not otherwise subject to any run-on and subsequent run-off of storm water.

(b) A facility regulated under this rule may request an exclusion from permit coverage by:

(1) submitting a complete United States Environmental Protection Agency "No Exposure Certification" form 3510-11 (10-99) to the commissioner;

(2) allowing the commissioner to inspect the facility to determine compliance with the "no exposure" conditions;

(3) allowing the commissioner to make any "no exposure" inspection reports available to the public upon request; and

(4) for facilities that discharge through a regulated MS4 conveyance, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(c) New or existing facilities that were not previously required to obtain a permit under this rule, but are subject to it, must either obtain permit coverage in accordance with sections 5 and 6 of this rule or comply with the procedures in subsection (b).

(d) Facilities that have an existing permit under this rule must also submit an NOT letter with the "No Exposure Certification" form.

(e) To determine if a facility can apply for the no exposure certification, the following must be considered:

(1) A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off.

(2) The conditional no exposure exclusion is available on a facility-wide basis only, not for individual outfalls, and a no exposure certification must be provided for each facility qualifying for the no exposure exclusion.

(3) The no exposure certification requirement applies to all industrial facilities regulated under this rule, including light industrial facilities that were previously not required to submit documentation to be excluded from storm water permitting requirements.

(4) A storm-resistant shelter is not required for the following industrial materials and activities:

(A) Drums, barrels, tanks, and similar containers that are tightly sealed, provided these containers are not deteriorated and do not leak.

(B) Adequately maintained vehicles used in material handling.

(C) Final products, except those products that would be mobilized in storm water discharges (for example, rock salt), products that may, when exposed to storm water, oxidize, deteriorate, leak, or otherwise be a potential source of contaminants, or final products which are in actuality intermediate products.

(5) Particulate matter emissions from roof stacks and vents that are regulated by, and in compliance with, other environmental protection programs (for example, air quality control programs) and do not cause storm water contamination are considered not exposed. Particulate matter or visible deposits of residuals from roof stacks and vents not otherwise regulated (for example, under an air quality control program) and evident in storm water discharges are considered exposed. Likewise, visible "track out" (pollutants carried on the tires of vehicles) and windblown raw materials are considered exposed.

(6) General and industrial refuse and trash are not considered exposed as long as the containers are completely covered and nothing can drain out holes in their bottoms, or is lost in loading onto a garbage truck. General and industrial refuse and trash that are left uncovered, however, are considered exposed.

(7) Storm water run-off from separate office buildings and their associated parking lots do not need to be considered when determining no exposure at an industrial facility.

(8) Temporary covers may be used to shelter materials and activities until permanent enclosure can be achieved. The temporary sheltering of industrial materials and activities is only allowed during facility renovation or construction.

(9) Aboveground storage tanks (ASTs) are generally considered not exposed and may be exempt from the prohibition against adding or withdrawing materials to or from external containers. For an AST to be operational and qualify for no exposure:

(A) it must be physically separated from, and not associated with, vehicle maintenance operations;

(B) there must be no piping, pumps, or other equipment leaking contaminants that could contact storm water; and

(C) it must be surrounded by some type of physical containment to prevent run-off in the event of a structural failure or leaking transfer valve.

(f) The no exposure certification must require the submission of the following information, at a minimum, to aid the department in determining if the facility qualifies for the no exposure exclusion:

(1) The person's name, address, and phone number.

(2) The facility name and address, the county name, and the latitude and longitude where the facility is located.

(3) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain and are exposed to storm water.

(B) Materials or residuals on the ground or in storm water inlets from spills or leaks.

(C) Materials or products from past industrial activity.

(D) Material handling equipment (except adequately maintained vehicles).

(E) Materials or products during loading and unloading or transporting activities.

(F) Materials or products stored outdoors (except final products intended for outside use, for example, new cars, where exposure to storm water does not result in the discharge of pollutants).

(G) Materials contained in open, deteriorated, or leaking storage drums, barrels, tanks, and similar containers.

(H) Materials or products handled or stored on roads or railways owned or maintained by the facility.

(I) Waste material (except waste in covered, nonleaking containers, for example, dumpsters).

(J) Application or disposal of process wastewater (unless otherwise permitted).

(K) Particulate matter or visible deposits of residuals from roof stacks or vents not otherwise regulated, that is, under an air quality control permit, and evident in the storm water outflow.

(4) All no exposure certifications must include the following certification statement and be signed in accordance with 327 IAC 15-4-3(g): "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under subsection (e)(4)). I understand that I am obligated to submit a no exposure certification form once every five (5) years to the department and, if requested, to the operator of the local regulated MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local regulated MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.".

(g) Information contained in the "No Exposure Certification" form 3510-11 (10-99)* and the United States Environmental Protection Agency's "Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water"(EPA 833-B-00-001 June 2000) shall be used by the commissioner to determine whether a facility is eligible for the exclusion. Definitions of terms provided in these documents shall apply to the commissioner's interpretation of the no exposure exclusion.**

(h) A facility excluded under this section shall meet the following requirements:

(1) A copy of the "No Exposure Certification" form must be retained on site at the facility for a period of five (5) years following the date that the commissioner received the original form in order for the no exposure exclusion to remain applicable.

(2) The "No Exposure Certification" form must be submitted once every five (5) years to the commissioner.

(3) The certification for no exposure is nontransferable. If a new operator or owner takes over a facility, the new operator shall immediately complete and submit a new certification form in order to claim the exclusion.

(4) If changes at a facility result in industrial activities or materials becoming exposed to storm water, the no exposure exclusion ceases to apply. The person with financial responsibility or operational control for the facility must submit an NOI letter in accordance with sections 5 and 6 of this rule at least two (2) days before the foreseen changes happen that cause the condition of exposure.

(5) If unforseen events, such as spills, equipment malfunctions, or acts of nature, cause industrial activities or materials to become exposed to storm water, the no exposure exclusion may still apply provided notification is given to the commissioner within twenty-four (24) hours of facility personnel becoming aware of the exposure and corrective measures are taken to reestablish a condition of no exposure prior to the next storm water discharge event.

(i) If the commissioner finds that, during a compliance inspection or at a later time, the facility has a reasonable potential to cause a violation or nonattainment of a water quality standard or does not meet the conditions for the no exposure exclusion, the commissioner may, upon notifying the facility in writing, deny or revoke the exclusion and

require the facility to obtain permit coverage within thirty (30) days of the date on the notification letter.

(j) Failure to maintain the condition of no exposure or obtain coverage under an NPDES permit may lead to the unauthorized discharge of pollutants to waters of the state.

***Copies of the No Exposure Certification Form referenced in this section are available from the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015.**

****Copies of the Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water referenced in this section are available from the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015.** *(Water Pollution Control Board; 327 IAC 15-6-12; filed Oct 27, 2003, 10:15 a.m.: 27 IR 860)*

SECTION 33. 327 IAC 15-5-11 IS REPEALED.

LSA Document #01-95(F)
Proposed Rule Published: February 1, 2003; 26 IR 1604
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Approved by Attorney General: October 9, 2003
Approved by Governor: October 24, 2003
Filed with Secretary of State: October 27, 2003, 10:15 a.m.
Incorporated Documents Filed with Secretary of State: Subtitle C of the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. 6921); 40 CFR 403; 40 CFR Chapter I, Subchapter N; Section 405 of the Clean Water Act (33 U.S.C. 1345); Section 208 of the Clean Water Act (33 U.S.C. 1288); 40 CFR 122.2; "No Exposure Certification" form 3510-11 (10-99); United States Environmental Protection Agency's "Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on 'No Exposure of Industrial Activities to Storm Water'" (EPA 833-B-00-001 June 2000).

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-18(F)

DIGEST

Amends 405 IAC 1-10.5-3 to remove annual inflationary adjustment to inpatient rates and adds requirements to the medical education rate calculation. Effective 30 days after filing with the secretary of state.

405 IAC 1-10.5-3

SECTION 1. 405 IAC 1-10.5-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-3 Prospective reimbursement methodology
Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1

Sec. 3. (a) The purpose of this section is to establish a prospective, cost-based reimbursement methodology for services provided by inpatient hospital facilities that are covered by the state of Indiana Medicaid program. The methodology for reimbursement described in this section shall be a prospective system wherein a payment rate for each hospital stay will be established according to a DRG reimbursement methodology or a level-of-care reimbursement methodology. Prospective payment shall constitute full reimbursement. There shall be no year-end cost settlement payments.

(b) Rebasing of the DRG and level-of-care methodologies will apply information from the most recent available cost report that has been filed and audited by the office or its contractor.

(c) Payment for inpatient stays reimbursed according to the DRG methodology shall be equal to the sum of the DRG rate, the capital rate, the medical education rate, and, if applicable, the outlier payment amount.

(d) Payment for inpatient stays reimbursed as level-of-care cases shall be equal to the sum of the per diem rate for each Medicaid day, the capital rate, the medical education rate, and, if applicable, the outlier payment amount (burn cases only).

(e) Inpatient stays reimbursed according to the DRG methodology shall be assigned to a DRG using the all patient DRG grouper.

(f) The DRG rate is equal to the product of the relative weight and the base amount.

(g) Initial relative weights were calculated using Indiana Medicaid claims data for inpatient stays with dates of admission within state fiscal years 1990, 1991, and 1992 and cost report data from facilities' fiscal year 1990 cost reports. Relative weights will be reviewed by the office and adjusted no more often than annually by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the relative use of hospital resources. Interim adjustments to the relative weights will not be made except in response to legislative mandates affecting Medicaid participating hospitals. Each legislative mandate will be evaluated individually to determine whether an adjustment to the relative weights will be made. DRG average length of stay values and outlier thresholds will be revised when relative weights are adjusted.

(h) Initial base amounts were calculated using cost report data

from facilities' fiscal year 1990 as-settled cost reports. Cost report data were inflated to the midpoint of the state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index available at the end of the 1993 calendar year. Base amounts will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing hospital services. ~~In the absence of rebasing, base amounts will be inflated annually according to the Hospital Market Basket Index published in the second quarter of the current year.~~

(i) The office may establish a separate base amount for children's hospitals to the extent necessary to reflect significant differences in cost. Each children's hospital will be evaluated individually for eligibility for the separate base amount. Children's hospitals with a case mix adjusted cost per discharge greater than one (1) standard deviation above the mean cost per discharge for DRG services will be eligible to receive the separate base amount established under this subsection. The separate base amount is equal to one hundred and twenty percent (120%) of the statewide base amount for DRG services.

(j) Initial level-of-care payment rates were calculated using Indiana Medicaid claims data for inpatient stays with dates of admission within state fiscal years 1990, 1991, and 1992 and cost report data from facilities' fiscal year 1990 cost reports. Cost report data was inflated to the midpoint of the state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index. Level-of-care rates will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing hospital services. ~~In the absence of rebasing, level-of-care rates will be inflated annually according to the Hospital Market Basket Index published in the second quarter of the current year.~~ The office shall not set separate level-of-care rates for different categories of facilities, except as specifically noted in this section.

(k) Level-of-care cases are categorized as DRG numbers 424–428, 429 (excluding diagnosis code 317.XX–319.XX), 430–432, 456–459, 462, and 472, as defined and grouped using the all patient DRG grouper, version 14.1. These DRG numbers represent burn, psychiatric, and rehabilitative care.

(l) In addition to the burn level-of-care rate, the office may establish an enhanced burn level-of-care rate for hospitals with specialized burn facilities, equipment, and resources for treating severe burn cases. In order to be eligible for the enhanced burn rate, facilities must ~~be designated as offering~~ **offer** a burn intensive care unit.

(m) The office may establish separate level-of-care rates for children's hospitals to the extent necessary to reflect significant differences in cost. Each children's hospital will be evaluated individually for eligibility for the separate level-of-care rate. Children's hospitals with a cost per day greater than one (1) standard deviation above the mean cost per day for level-of-care services will be eligible to receive the separate base amount. Determinations will be made for each level-of-care category. The separate base amount is equal to one hundred twenty percent (120%) of the statewide level-of-care rate.

(n) The office may establish separate level-of-care rates, policies, billing instructions, and frequency for long term care hospitals to the extent necessary to reflect differences in treatment patterns for patients in such facilities. Hospitals must meet the definition of long term hospital set forth in this rule to be eligible for the separate level-of-care rate.

(o) Capital payment rates shall be prospectively determined and shall constitute full reimbursement for capital costs. The initial flat, statewide per diem capital rate was calculated using cost report data from facilities' fiscal year 1990 cost reports, inflated to the midpoint of state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index and adjusted to reflect a minimum occupancy level for non-nursery beds of eighty percent (80%). Capital per diem rates will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the capital costs associated with efficiently providing hospital services. ~~In the absence of rebasing, the per diem capital rate will be inflated annually using the Hospital Market Basket Index published in the second quarter of the current year.~~

(p) The capital payment amount for Medicaid stays reimbursed under the DRG methodology shall be equal to the product of the per diem capital rate and the average length of stay for all cases within the particular DRG. Medicaid stays reimbursed under the level-of-care methodology will be paid the per diem capital rate for each covered day of care. The office shall not set separate capital per diem rates for different categories of facilities, except as specifically noted in this rule.

(q) Medical education rates shall be prospective, hospital-specific per diem amounts. The medical education payment amount for stays reimbursed under the DRG methodology shall be equal to the product of the medical education per diem rate and the average length of stay for the DRG. Payment amounts for medical education for stays reimbursed under the level-of-care methodology shall be equal to the medical education per diem rate for each covered day of care.

(r) Facility-specific, per diem medical education rates shall be based on **medical education** costs ~~per resident~~ per day multi-

plied by the number of residents reported by the facility. Initial costs per resident per day were determined according to each facility's fiscal year 1990 cost report. In subsequent years, but no more often than every second year, the office will use the most recent cost report data **that has been filed and audited by the office or its contractor** to determine a **medical education** cost ~~per resident~~ per day that more accurately reflects the cost of efficiently providing hospital services. **For hospitals with approved graduate medical education programs,** the number of residents will be determined according to the most recent available cost report that has been filed and audited by the office or its contractor. ~~In the absence of rebasing, the medical education per diem will be inflated annually using the Hospital Market Basket Index published in the second quarter of the current year.~~ **Indirect medical education costs shall not be reimbursed.**

(s) Medical education payments will only be available to hospitals that continue to operate medical education programs. Hospitals must notify the office within thirty (30) days following discontinuance of their medical education program.

(t) For hospitals with new medical education programs, the **corresponding** medical education per diem will **not** be effective ~~no earlier than two (2) months~~ prior to notification to the office that the program has been implemented. The medical education per diem shall be based on the most recent reliable claims data and cost report data.

(u) Cost outlier cases are determined according to a threshold established by the office. For purposes of establishing outlier payment amounts, prospective determination of costs per inpatient stay shall be calculated by multiplying a cost-to-charge ratio by submitted and approved charges. Outlier payment amounts shall be equal to a percentage of the difference between the prospective cost per stay and the outlier threshold amount. Cost outlier payments are not available for cases reimbursed using the level-of-care methodology, except for burn cases that exceed the established threshold.

(v) Readmissions will be treated as separate stays for payment purposes, but will be subject to medical review. If it is determined that a discharge is premature, payment made as a result of the discharge or readmission may be subject to recoupment.

(w) Special payment policies shall apply to transfer cases. The transferee, or receiving, hospital is paid according to the DRG methodology or level-of-care methodology. The transferring hospital is paid the sum of the following:

(1) A DRG daily rate for each Medicaid day of the recipient's stay, not to exceed the appropriate full DRG payment, or the level-of-care per diem payment rate for each Medicaid day of care provided.

(2) The capital per diem rate.

(3) The medical education per diem rate. Certain DRGs are established to specifically include only transfer cases; for these DRGs, reimbursement shall be equal to the DRG rate.

(x) Special payment policies shall apply to less than one-day stays that are paid according to a DRG rate. For less than one-day stays, hospitals will be paid a DRG daily rate, the capital per diem rate for one (1) day of stay, and the medical education per diem rate for one (1) day of stay, if applicable. *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-3; filed Oct 5, 1994, 11:10 a.m.: 18 IR 245; filed Nov 16, 1995, 3:00 p.m.: 19 IR 664; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1083; filed Dec 27, 1996, 12:00 p.m.: 20 IR 1515; errata filed Mar 21, 1997, 9:45 a.m.: 20 IR 2116; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 57; errata filed Jan 25, 2002, 2:27 p.m.: 25 IR 1906; filed Oct 20, 2003, 10:00 a.m.: 27 IR 863)*

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Incorporated Documents Filed with Secretary of State: None

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #03-4(F)

DIGEST

Amends 410 IAC 1-2.3-47 and 410 IAC 1-2.3-48 and adds 410 IAC 1-2.3-97.5 governing the reporting and control measures of communicable disease to add smallpox and complications related to vaccinations for smallpox. Effective 30 days after filing with the secretary of state.

410 IAC 1-2.3-47
410 IAC 1-2.3-48
410 IAC 1-2.3-97.5

SECTION 1. 410 IAC 1-2.3-47 IS AMENDED TO READ AS FOLLOWS:

410 IAC 1-2.3-47 Reporting requirements for physicians and hospital administrators

Authority: IC 16-41-2-1
Affected: IC 4-22-2-37.1; IC 16-21; IC 16-41-2-8; IC 25-22.5

Sec. 47. (a) It shall be the duty of each physician licensed under IC 25-22.5, and each administrator of a hospital licensed under IC 16-21, or the administrator's representative, to report all cases, and suspected cases of the diseases listed in subsec-

tion (d). Reporting of specimen results by a laboratory to health officials does not nullify the physician's or administrator's obligations to report said case.

(b) The report required by subsection (a) shall be made to the local health officer in whose jurisdiction the patient was examined at the time the diagnosis was made or suspected. If the patient is a resident of a different jurisdiction, the local health jurisdiction receiving the report shall forward the report to the local health jurisdiction where the patient resides. If a person who is required to report is unable to make a report to the local health officer within the time mandated by this rule, a report shall be made directly to the department within the time mandated by this rule.

(c) Any reports of diseases required by subsection (a) shall include the following:

(1) The patient's:
  (A) full name;
  (B) street address;
  (C) city;
  (D) zip code;
  (E) county of residence;
  (F) telephone number;
  (G) age or date of birth;
  (H) sex; and
  (I) race and ethnicity, if available.

(2) Date of onset.

(3) Diagnosis.

(4) Definitive diagnostic test results (for example, culture, IgM, serology, or Western Blot).

(5) Name, address, and telephone number of the attending physician.

(6) Other epidemiologically necessary information requested by the local health officer or the commissioner.

(7) Persons who are tested anonymously at a counseling and testing site cannot be reported using personal identifiers; rather, they are to be reported using a numeric identifier code. Age, race, sex, risk factors, and county of residence shall also be reported.

(8) Name, address, and telephone number of person completing report.

(d) The dangerous communicable diseases and conditions described in this subsection shall be reported within the time specified. Diseases or conditions that are to be reported immediately to the local health officer shall be reported by telephone or other instantaneous means of communication on first knowledge or suspicion of the diagnosis. Diseases that are to be reported within seventy-two (72) hours shall be reported to the local health officer within seventy-two (72) hours of first knowledge or suspicion of the diagnosis by telephone, electronic data transfer, other confidential means of communication, or official report forms furnished by the department. During evening, weekend, and holiday hours, those required to report should report diseases required to be immediately reported to the after-hours duty officer at the local health department. If unable to contact the after-hours duty officer locally, or one has not been designated locally, those required to report shall file their reports with the after-hours duty officer at the department at (317) 233-1325 or (317) 233-8115.

DANGEROUS COMMUNICABLE DISEASES AND CONDITIONS

Disease	When to Report (from probable diagnosis)	Disease Intervention Methods (section in this rule)
Acquired immunodeficiency syndrome	See HIV Infection/Disease	Sec. 76
Animal bites	Within 24 hours	Sec. 52
Anthrax	Immediately	Sec. 53
Babesiosis	Within 72 hours	Sec. 54
Botulism	Immediately	Sec. 55
Brucellosis	Within 72 hours	Sec. 56
Campylobacteriosis	Within 72 hours	Sec. 57
Chancroid	Within 72 hours	Sec. 58
Chlamydia trachomatis, genital infection	Within 72 hours	Sec. 59
Cholera	Immediately	Sec. 60
Cryptosporidiosis	Within 72 hours	Sec. 61
Cyclospora	Within 72 hours	Sec. 62
Diphtheria	Immediately	Sec. 63
Ehrlichiosis	Within 72 hours	Sec. 64
Encephalitis, arboviral, Calif, EEE, WEE, SLE, West Nile	Immediately	Sec. 65

Escherichia coli, infection (including E. coli 0157:H7 and other enterohemorrhagic types)	Immediately	Sec. 66
Gonorrhea	Within 72 hours	Sec. 67
Granuloma inguinale	Within 72 hours	Sec. 68
Haemophilus influenzae invasive disease	Immediately	Sec. 69
Hansen's disease (leprosy)	Within 72 hours	Sec. 70
Hantavirus pulmonary syndrome	Immediately	Sec. 71
Hemolytic uremic syndrome, postdiarrheal	Immediately	Sec. 66
Hepatitis, viral, Type A	Immediately	Sec. 72
Hepatitis, viral, Type B	Within 72 hours	Sec. 73
Hepatitis, viral, Type B, pregnant woman (acute and chronic), or perinatally exposed infant	Immediately (when discovered at or close to time of birth)	Sec. 73
Hepatitis, viral, Type C (acute)	Within 72 hours	Sec. 74
Hepatitis, viral, Type Delta	Within 72 hours	Sec. 73
Hepatitis, viral, unspecified	Within 72 hours	
Histoplasmosis	Within 72 hours	Sec. 75
HIV infection/disease	Within 72 hours	Sec. 76
HIV infection/disease, pregnant woman, or perinatally exposed infant	Immediately (when discovered at or close to time of birth)	Sec. 76
Legionellosis	Within 72 hours	Sec. 77
Leptospirosis	Within 72 hours	Sec. 78
Listeriosis	Within 72 hours	Sec. 79
Lyme disease	Within 72 hours	Sec. 80
Lymphogranuloma venereum	Within 72 hours	Sec. 81
Malaria	Within 72 hours	Sec. 82
Measles (rubeola)	Immediately	Sec. 83
Meningitis, aseptic	Within 72 hours	Sec. 84
Meningococcal disease, invasive	Immediately	Sec. 85
Mumps	Within 72 hours	Sec. 86
Pertussis	Immediately	Sec. 88
Plague	Immediately	Sec. 89
Poliomyelitis	Immediately	Sec. 90
Psittacosis	Within 72 hours	Sec. 91
Q Fever	Immediately	Sec. 92
Rabies in humans or animals (confirmed and suspect animal with human exposure)	Immediately	Sec. 93
Rabies, postexposure treatment	Within 72 hours	Secs. 93 and 52
Rocky Mountain spotted fever	Within 72 hours	Sec. 94
Rubella (German measles)	Immediately	Sec. 95
Rubella congenital syndrome	Immediately	Sec. 95
Salmonellosis, other than typhoid fever	Within 72 hours	Sec. 96
Shigellosis	Immediately	Sec. 97

Smallpox (variola infection)	**Immediately**	**Sec. 97.5**
Adverse events or complications due to smallpox vaccination (vaccinia virus infection) or secondary transmission to others after vaccination. This includes accidental implantation at sites other than the vaccination site, secondary bacterial infections at vaccination site, vaccinia keratitis, eczema vaccinatum, generalized vaccinia, congenital vaccinia, progressive vaccinia, vaccinia encephalitis, death due to vaccinia complications, and other complications requiring significant medical intervention.	**Immediately**	**Sec. 97.5**
Staphylococcus aureus, Vancomycin resistance level of MIC ≥ 8 µg/mL	Immediately	Sec. 98
Streptococcus pneumoniae, invasive disease, and antimicrobial resistance pattern	Within 72 hours	Sec. 99
Streptococcus, Group A, invasive disease	Within 72 hours	Sec. 100
Streptococcus, Group B, invasive disease	Within 72 hours	Sec. 101
Syphilis	Within 72 hours	Sec. 102
Tetanus	Within 72 hours	Sec. 103
Toxic shock syndrome (streptococcal or staphylococcal)	Within 72 hours	Sec. 104
Trichinosis	Within 72 hours	Sec. 105
Tuberculosis, cases and suspects	~~Withing~~ **Within** 72 hours	Sec. 106
Tularemia	Immediately	Sec. 107
Typhoid fever, cases and carriers	Immediately	Sec. 108
Typhus, endemic (flea borne)	Within 72 hours	Sec. 109
Varicella, resulting in hospitalization or death	Within 72 hours	Sec. 110
Yellow fever	Within 72 hours	Sec. 111
Yersiniosis	Within 72 hours	Sec. 112

DANGEROUS BUT NOT COMMUNICABLE DISEASES AND CONDITIONS OF PUBLIC HEALTH SIGNIFICANCE

Disease and Condition	When to Report (from probable diagnosis)	Disease Intervention Methods
Pediatric venous blood lead ~~≥~~ > 10 µg/dl in children less than or equal to 6 years of age	Within 1 week	Sec. 87

(e) Reporting of HIV infection/disease shall include classification as defined in the CDC Morbidity and Mortality Weekly Report, Volume 41, No. RR-17, 1993 Revised Classification System for HIV Infection and Expanded Surveillance Case Definition for AIDS among Adolescents and Adults. Reporting of HIV infection/disease in children less than thirteen (13) years of age shall include classification as defined in the CDC Morbidity and Mortality Weekly Report, Volume 43, No. RR-12, 1994 Revised Classification System for Human Immunodeficiency Virus Infection in Children Less Than 13 Years of Age. Supplemental reports shall be provided by the physician when an individual's classification changes. The CD4+ T-lymphocyte count and percentage, or viral load count, or both, shall be included with both initial and supplemental reports.

(f) The department, under the authority of IC 4-22-2-37.1, may adopt emergency rules to include mandatory reporting of emerging infectious diseases. Reports shall include the information specified in ~~section 47(c)~~ **subsection (c)** of this rule.

(g) Outbreaks of any of the following shall be reported immediately upon suspicion:

(1) Any disease required to be reported under this section.
(2) Diarrhea of the newborn (in hospitals or other institutions).
(3) Foodborne or waterborne diseases in addition to those specified by name in this rule.
(4) Streptococcal illnesses.
(5) Conjunctivitis.
(6) Impetigo.
(7) Nosocomial disease within hospitals and health care facilities.
(8) Influenza-like illness.
(9) Unusual occurrence of disease.
(10) Any disease (that is, anthrax, plague, tularemia, Brucella species, smallpox, or botulinum toxin) or chemical illness that is considered a bioterrorism threat, importation, or laboratory release.

(h) Failure to report constitutes a Class A infraction as specified by IC 16-41-2-8. *(Indiana State Department of Health; 410 IAC 1-2.3-47; filed Sep 11, 2000, 1:36 p.m.: 24 IR 339; filed Oct 23, 2003, 4:10 p.m.: 27 IR 865)*

SECTION 2. 410 IAC 1-2.3-48 IS AMENDED TO READ AS FOLLOWS:

410 IAC 1-2.3-48 Laboratories; reporting requirements
Authority: IC 16-41-2-1
Affected: IC 16-41-2-8

Sec. 48. (a) Each director, or the director's representative, of a medical laboratory in which examination of any specimen derived from the human body yields microscopic, bacteriologic, immunologic, serologic, or other evidence of infection by any of the organisms or agents listed in ~~section 48(d) of this rule~~ **subsection (d)** shall report such findings and any other epidemiologically necessary information requested by the department. HIV serologic results of tests performed anonymously in conjunction with the operation of a counseling and testing site registered with the department shall not be identified by name of patient, but by a numeric identifier code; for appropriate method to report such results, see subsection (b).

(b) The report required by subsection (a) shall, at a minimum, include the following:

(1) Name, date, results of test performed, the laboratory's normal limits for that test, and the laboratory's interpretation of the test results.

(2) Name of person and date of birth or age from whom specimen was obtained.

(3) Name, address, and telephone number of attending physician, hospital, clinic, or other specimen submitter.

(4) Name, address, and telephone number of the laboratory performing the test.

(c) This subsection does not preclude laboratories from testing specimens, which, when submitted to the laboratory, are identified by a numeric identifier code and not by name of patient. If testing of such a specimen, identified by numeric code, produces results that are required to be reported under this rule, the laboratory shall submit a report that includes the following:

(1) Numeric identifier code, date, and results of tests performed.

(2) Name and address of attending physician, hospital, clinic, or other.

(3) Name and address of the laboratory performing the test.

(d) Laboratory findings demonstrating evidence of the following infections, diseases, or conditions shall be reported at least weekly to the department:

(1) Arboviruses, including, but not limited to, the following:
(A) St. Louis.
(B) California group.
(C) Eastern equine.
(D) Western equine.
(E) West Nile.
(F) Japanese B.
(G) Yellow fever.
(2) Babesia species.
(3) Bacillus anthracis.
(4) Bordetella pertussis.
(5) Borrelia burgdorferi.
(6) Brucella species.
(7) Calymmatobacterium granulomatis.
(8) Campylobacter species.
(9) Chlamydia psittaci.
(10) Chlamydia trachomatis.
(11) Clostridium botulinum.
(12) Clostridium perfringens.
(13) Clostridium tetani.
(14) Corynebacterium diphtheriae.
(15) Coxiella burnetii.
(16) Cryptococcus neoformans.
(17) Cryptosporidium parvum.
(18) Cyclospora cayetanensis.
(19) Ehrlichia chaffeensis.
(20) Ehrlichia phagocytophila.
(21) Enteroviruses (coxsackie, echo, polio).
(22) Escherichia coli infection (including E. coli 0157:H7 and other enterohemorrhagic types).
(23) Francisella tularensis.
(24) Haemophilus ducreyi.
(25) Hantavirus.
(26) Hepatitis viruses:
(A) anti-HAV IgM;
(B) HbsAg or HbeAg or anti-HBc IgM;
(C) RIBA or RNA or Anti-HCV, or any combination;
(D) Delta.
(27) Haemophilus influenzae, invasive disease.
(28) Histoplasmosis capsulatum.
(29) HIV and related retroviruses.
(30) Influenza.
(31) Kaposi's sarcoma (biopsies).
(32) Legionella species.
(33) Leptospira species.
(34) Listeria monocytogenes.
(35) Measles virus.
(36) Mumps virus.
(37) Mycobacterium tuberculosis.
(38) Neisseria gonorrhoeae.
(39) Neisseria meningitidis, invasive.
(40) Pediatric blood lead tests (capillary and venous) equal to or greater than 10 µg/dl on children less than or equal to six (6) years of age.
(41) Plasmodium species.
(42) Pneumocystis carinii.
(43) Rabies virus (animal or human).
(44) Rickettsia species.
(45) Rubella virus.
(46) Salmonella species.
(47) Shigella species and antimicrobial resistance pattern.
(48) Smallpox (variola) virus.
~~(48)~~ **(49)** Staphylococcus aureus, Vancomycin resistance

equal to or greater than 8 µg/mL.
~~(49)~~ **(50)** Streptococcus pneumoniae, invasive disease, and antimicrobial resistance pattern.
~~(50)~~ **(51)** Streptococcus Group A (Streptococcus pyogenes), invasive disease.
~~(51)~~ **(52)** Streptococcus Group B, invasive disease.
~~(52)~~ **(53)** Treponema pallidum.
~~(53)~~ **(54)** Trichinella spiralis.
~~(54)~~ **(55)** Vibrio species.
~~(55)~~ **(56)** Yersinia species, including pestis, enterocolitica, and pseudotuberculosis.

(e) Laboratories may also report to the local health officer, but any such local report shall be in addition to reporting to the department. A laboratory may report by electronic data transfer, telephone, or other confidential means of communication. In lieu of electronic data transfer or reporting by telephone, a laboratory may submit a legible copy of the laboratory report, provided that the information specified in subsection (b) appears thereon. Whenever a laboratory submits a specimen, portion of a specimen, or culture to the department laboratory resource center for confirmation, phage typing, or other service, these reporting requirements will be deemed to have been fulfilled, provided that the minimum information specified in subsection (b) accompanies the specimen or culture.

(f) Laboratories shall submit all isolates of the following organisms to the department's microbiology laboratory for further evaluation:
(1) Haemophilus influenzae, invasive disease.
(2) Neisseria meningitidis, invasive disease.
(3) E. coli 0157:H7 or sorbital-negative E. coli isolates.
(4) Staphylococcus aureus, Vancomycin resistance equal to or greater than 8 µg/mL.
(5) Mycobacterium tuberculosis.
(6) Listeria monocytogenes.
(7) Salmonella from any site.

(g) Quarterly report the total number of blood lead test (capillary and venous) performed on children six (6) ~~or less~~ years of age **or less.**

(h) Reporting by a laboratory, as required by this section, shall not:
(1) constitute a diagnosis or a case report; and
(2) be considered to fulfill the obligation of the attending physician or hospital to report.

~~(i) Failure to report constitutes a Class A infraction as specified by IC 16-41-2-8.~~ *(Indiana State Department of Health; 410 IAC 1-2.3-48; filed Sep 11, 2000, 1:36 p.m.: 24 IR 342; filed Oct 23, 2003, 4:10 p.m.: 27 IR 869)*

SECTION 3. 410 IAC 1-2.3-97.5 IS ADDED TO READ AS FOLLOWS:

410 IAC 1-2.3-97.5 Smallpox; specific control measures
Authority: IC 16-41-2-1
Affected: IC 16-41-2; IC 16-41-9

Sec. 97.5. The control measures for smallpox are to:
(1) begin an investigation immediately by the department in conjunction with the local health officer to determine the possible sources of infection;
(2) trace contacts of the known case; and
(3) determine the extent of the outbreak.
(Indiana State Department of Health; 410 IAC 1-2.3-97.5; filed Oct 23, 2003, 4:10 p.m.: 27 IR 870)

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Approved by Attorney General: October 10, 2003
Approved by Governor: October 23, 2003
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Incorporated Documents Filed with Secretary of State: None

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #03-136(F)

DIGEST

Amends 470 IAC 6-2-1 and 470 IAC 6-2-13 to allow for a six month certification period for food stamp recipients pursuant to Section 4109 of the Farm Bill. Amends 470 IAC 6-4.1-4 to simplify changes a recipient must report during this period. Effective 30 days after filing with the secretary of state.

470 IAC 6-2-1
470 IAC 6-2-13
470 IAC 6-4.1-4

SECTION 1. 470 IAC 6-2-1 IS AMENDED TO READ AS FOLLOWS:

470 IAC 6-2-1 Household reporting requirements
Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13-7-6

Sec. 1. A food stamp household is required to report changes as stated in 7 CFR 273.12(a) **and 7 U.S.C. 2015(c)(1)(D).** *(Division of Family and Children; 470 IAC 6-2-1; filed Apr 12, 1984, 8:24 a.m.: 7 IR 1503; filed Jul 16, 1987, 2:00 p.m.: 10 IR 2663; filed Jun 1, 1989, 10:00 a.m.: 12 IR 1855; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; filed Oct 20, 2003, 9:45 a.m.: 27 IR 870)*

SECTION 2. 470 IAC 6-2-13 IS AMENDED TO READ AS FOLLOWS:

470 IAC 6-2-13 Certification periods
Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13-7-6

Sec. 13. (a) The agency shall establish a certification period for a PA household such that ~~the aid to families with dependent children (AFDC)~~ **temporary assistance to needy families (TANF)** restudy and food stamp recertification may be accomplished at the same time, provided no loss of, or delay in receipt of, food stamp benefits occurs.

(b) The agency shall establish a certification period tailored to the income calculation for any NA household for which self-employment income is annualized, contractual income is annualized, or educational income is prorated over the period the educational income is intended to cover.

(c) The agency shall establish a certification period of six (6) months ~~when an individual and his or her minor children and spouse live with the individual's parent or sibling.~~ **for all households except those which consist of all members who are elderly or disabled according to the criteria as stated in 7 CFR 273.1(b)(2). Elderly or disabled households shall have a certification period of twelve (12) months.**

~~(d) If an NA household falls subject to the criteria in subsections (b) through (c), the agency shall establish a certification period of six (6) months.~~

~~(e) If a household does not fall subject to any of the criteria described in subsections (a) through (c), the agency shall establish the longest certification period possible (up to one (1) year) based on the predictability of the household's circumstances.~~

~~(f)~~ **(d)** When one (1) household moves into another household, residing at the same address, the agency shall shorten the certification period of the household with the longest certification in order to align the certification periods. *(Division of Family and Children; 470 IAC 6-2-13; filed Apr 12, 1984, 8:24 a.m.: 7 IR 1506; filed Jul 16, 1987, 2:00 p.m.: 10 IR 2665; filed Jun 1, 1989, 10:00 a.m.: 12 IR 1856; filed May 17, 1993, 5:00 p.m.: 16 IR 2402; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; filed Oct 20, 2003, 9:45 a.m.: 27 IR 871)*

SECTION 3. 470 IAC 6-4.1-4 IS AMENDED TO READ AS FOLLOWS:

470 IAC 6-4.1-4 Change reporting
Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13-7-6

Sec. 4. **(a) Households with a six (6) month certification period are only required to report when the monthly income exceeds one hundred thirty percent (130%) of the federal poverty level. Households must report changes in the gross income greater than one hundred thirty percent (130%) of the federal poverty level by the tenth day of the next month after the change occurs.**

~~(a)~~ **(b)** Households **with a twelve (12) month certification period** must report changes as required in 7 CFR 273.12. ~~with the exception that the state agency~~

(c) Households with a six (6) month certification period may report any other changes that occur, and those changes will be processed after verification is provided.

(d) Neither the division nor the county office shall ~~not~~ pay ~~the~~ postage for ~~the household~~ **households** to mail the change report form provided by the agency.

~~(b)~~ **(e)** All changes reported within the certification period necessary to determine eligibility shall be verified prior to implementing the changes.

~~(c)~~ **(f)** All reported changes which result in an increase in benefits shall be reflected the month following the month the change is reported providing verification is provided timely.

~~(d)~~ **(g)** Households which do not cooperate by providing requested verification ~~and/or~~ **or** information, **or both,** of reported changes, necessary to determine eligibility, shall be discontinued with advance notice. *(Division of Family and Children; 470 IAC 6-4.1-4; filed May 17, 1993, 5:00 p.m.: 16 IR 2404; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; filed Oct 20, 2003, 9:45 a.m.: 27 IR 871)*

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Incorporated Documents Filed with Secretary of State: None

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #03-8(F)

DIGEST

Adds 760 IAC 1-69 to recognize, permit, and prescribe the use of the 2001 Commissioners Standard Ordinary Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits. Effective January 1, 2004.

760 IAC 1-69

SECTION 1. 760 IAC 1-69 IS ADDED TO READ AS FOLLOWS:

Rule 69. Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits

760 IAC 1-69-1 Definitions

Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5

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

(1) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002. Unless the context indicates otherwise, the term includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

(2) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(3) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(4) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(5) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(Department of Insurance; 760 IAC 1-69-1; filed Oct 29, 2003, 2:30 p.m.: 27 IR 872, eff Jan 1, 2004)

760 IAC 1-69-2 2001 CSO Mortality Table

Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5

Sec. 2. (a) At the election of the company for any one (1) or more specified plans of insurance and subject to the conditions stated in this rule, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2004, and before the date specified in subsection (b) to which IC 27-1-12-10(2), IC 27-1-12-7(dd), 760 IAC 1-64-3(a), and 760 IAC 1-64-3(b) are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which IC 27-1-12-10(2), IC 27-1-12-7(dd), 760 IAC 1-64-3(a), and 760 IAC 1-64-3(b) are applicable. *(Department of Insurance; 760 IAC 1-69-2; filed Oct 29, 2003, 2:30 p.m.: 27 IR 872, eff Jan 1, 2004)*

760 IAC 1-69-3 Conditions

Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5

Sec. 3. (a) For each plan of insurance with separate rates for smokers and nonsmokers, an insurer may use any of the following:

(1) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by IC 27-1-12-10(6) and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits.

(3) Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables shall be used.

(c) For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of 760 IAC 1-64 relative to use of the select and ultimate form.

(d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis as specified in 760 IAC 1-57-8. *(Department of Insurance; 760 IAC 1-69-3; filed Oct 29, 2003, 2:30 p.m.: 27 IR 872, eff Jan 1, 2004)*

760 IAC 1-69-4 Applicability of the 2001 CSO Mortality Table to 760 IAC 1-64

Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5

Sec. 4. (a) The 2001 CSO Mortality Table may be used in applying 760 IAC 1-64 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in section 2 of this rule:

(1) 760 IAC 1-64-1(c)(3)(B): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

(2) 760 IAC 1-64-2(d): All calculations are made using the

2001 CSO Mortality Rate and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in subdivision (4). The value of q_{x+k-1} is the valuation mortality rate for deficiency reserves in policy year k+t, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.
(3) 760 IAC 1-64-3(a): The 2001 CSO Mortality Table is the minimum standard for basic reserves.
(4) 760 IAC 1-64-3(b): The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in 760 IAC 1-64-3(b)(3)(A) through 760 IAC 1-64-3(b)(3)(I). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table unless the combination is explicitly required by rule or necessary to be in compliance with relevant Actuarial Standards of Practice.
(5) 760 IAC 1-64-4(c): The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.
(6) 760 IAC 1-64-4(e)(4): The calculations specified in 760 IAC 1-64-4(e) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.
(7) 760 IAC 1-64-4(f)(4): The calculations specified in 760 IAC 1-64-4(f) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.
(8) 760 IAC 1-64-4(g)(2): The calculations specified in 760 IAC 1-64-4(g) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.
(9) 760 IAC 1-64-5(a)(1)(B): The one (1) year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

(b) Nothing in this section shall be construed to expand the applicability of 760 IAC 1-64 to include life insurance policies exempted under 760 IAC 1-64-1(c). *(Department of Insurance; 760 IAC 1-69-4; filed Oct 29, 2003, 2:30 p.m.: 27 IR 872, eff Jan 1, 2004)*

760 IAC 1-69-5 Gender-blended tables
Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-4-1-4

Sec. 5. (a) For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2004, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this provision.

(b) The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the National Association of Insurance Commissioners in December 2002.

(c) It shall not, in and of itself, be a violation of IC 27-4-1-4 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis. *(Department of Insurance; 760 IAC 1-69-5; filed Oct 29, 2003, 2:30 p.m.: 27 IR 873, eff Jan 1, 2004)*

760 IAC 1-69-6 Incorporation by reference
Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-4-1-4

Sec. 6. The 2001 Commissioner's Standard Ordinary Mortality Tables are incorporated by reference as a part of this rule. These documents are available for public review at the department. *(Department of Insurance; 760 IAC 1-69-6; filed Oct 29, 2003, 2:30 p.m.: 27 IR 873, eff Jan 1, 2004)*

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TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

LSA Document #03-125(F)

DIGEST

Amends 864 IAC 1.1-2-2 to revise the minimum education and experience requirements established under IC 25-31-1-12 for admission to the professional engineer examination to address college courses that cover two or more categories. Adds 864 IAC 1.1-14 to establish the requirements for a limited liability company to practice or offer to practice engineering in Indiana. Partially effective 30 days after filing with the secretary of state and partially effective January 3, 2004.

864 IAC 1.1-2-2
864 IAC 1.1-14

SECTION 1. 864 IAC 1.1-2-2, AS AMENDED AT 26 IR 379, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-2-2 Engineers; education and work experience

Authority: IC 25-31-1-7; IC 25-31-1-8
Affected: IC 25-31-1-12

Sec. 2. (a) This section establishes the minimum education and experience requirements under IC 25-31-1-12 for admission to the professional engineer examination.

(b) The following table establishes provisions for evaluating combined education and experience to determine if it is sufficient to satisfy minimum registration requirements under IC 25-31-1-12 for professional engineer registration applicants holding the stated degrees:

Education (Qualifying Degree)	Minimum Years of Progressive Work Experience Following Baccalaureate Degree
Doctorate in an engineering discipline following a baccalaureate degree in an approved engineering curriculum	2
Master of science degree in an engineering discipline following a baccalaureate degree in an approved engineering curriculum	3
Doctorate in an engineering discipline following a baccalaureate degree which is not in an approved engineering curriculum	4
Master of science degree in an engineering discipline following a baccalaureate degree which is not in an approved engineering curriculum	5
Baccalaureate degree in an approved engineering curriculum	4
Baccalaureate degree and completion of specific educational courses as required in subsection (c)	6

(c) The education of all applicants, except those who have obtained a baccalaureate degree in an approved engineering curriculum, must include the following:

(1) At least twelve (12) semester credit hours in college level mathematics, excluding college algebra and trigonometry, which must include a minimum of nine (9) semester credit hours of calculus and a minimum of three (3) semester credit hours of advanced calculus based mathematics, such as differential equations, linear algebra, or numerical analysis.

(2) At least eight (8) semester credit hours in college level courses in the physical sciences, which must include a minimum of three (3) semester credit hours of calculus based physics and a minimum of three (3) semester credit hours of chemistry.

(3) At least twelve (12) semester credit hours of engineering sciences that require calculus as a prerequisite or corequisite.

(4) Effective January 3, 2003, at least twelve (12) semester credit hours in engineering design.

(d) For a course to qualify as an engineering design course, the course must instruct on the decision making process in which the basic sciences and mathematics and engineering sciences are applied to convert resources optimally to meet a stated objective. Among the fundamental elements of the design process are the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. The content of an engineering design course must include some of the following features:

(1) Development of student creativity.

(2) Use of open-ended problems.

(3) Development and use of modern design theory and methodology.

(4) Formulation of design problems statements and specifications.

(5) Consideration of alternative solutions, feasibility considerations, production processes, concurrent engineering design, and detailed system descriptions.

Further, it is essential that a variety of realistic constraints, such as economic factors, safety, reliability, aesthetics, ethics, and social impact be included.

(e) An applicant for admission for the examination must:

(1) include on the application, or a document attached to the application, which courses meet the requirements of subsection (c) by stating the course names and numbers; and

(2) submit all college transcripts that show that college credit was awarded for the claimed courses.

(f) No degree requirement under this section may be achieved by obtaining an honorary degree or a degree obtained entirely by correspondence.

(g) College courses with substantial duplication of content may be counted only one (1) time toward the requirements of subsection (c).

(h) College courses that cover two (2) or more categories in subsection (c) shall be counted only in one (1) category. The appropriate category is that which is the greatest portion of the course. In determining the greatest portion of the course, the board may take into account information from the institution offering the course.

~~(h)~~ **(i)** Progressive experience of sufficient quality when used relative to the requirement for experience on engineering projects as provided for in IC 25-31-1-12(a) means the applicant has demonstrated the ability to assume continuously increasing levels of responsibility for engineering projects.

~~(i)~~ **(j)** No experience obtained prior to a baccalaureate degree shall qualify.

~~(j)~~ **(k)** Part-time experience acquired while the applicant was a full-time student shall not qualify. All other part-time experience shall be converted to its full-time equivalent in evaluating an application.

~~(k)~~ **(l)** Notwithstanding other provisions of this section, applicants who hold either a valid certificate as an EI or an engineer-in-training (EIT) do not need any additional education beyond that which was required for admission to the EI or EIT examination in Indiana, so long as they apply for admission to the professional engineer examination no later than the first examination application deadline (as provided for in 864 IAC 1.1-3-4), which is subsequent to seven (7) years after the date the applicant took and passed the engineering intern examination. *(State Board of Registration for Professional Engineers; Rule 2, Sec 2; filed Feb 29, 1980, 3:40 p.m.: 3 IR 627; filed Oct 17, 1986, 2:20 p.m.: 10 IR 435; filed Sep 24, 1992, 9:00 a.m.: 16 IR 726, eff Jan 1, 1993; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2103, eff Jul 4, 1995; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2112, eff Jan 3, 1997; filed Mar 27, 2000, 8:58 a.m.: 23 IR 2002; filed May 4, 2001, 11:13 a.m.: 24 IR 2694, eff Jul 3, 2001; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824; filed Sep 23, 2002, 9:59 a.m.: 26 IR 379, eff Dec 1, 2002; filed Nov 7, 2003, 12:00 p.m.: 27 IR 874, eff Jan 3, 2004)*

SECTION 2. 864 IAC 1.1-14 IS ADDED TO READ AS FOLLOWS:

Rule 14. Limited Liability Company Practice

864 IAC 1.1-14-1 Limited liability company practice
Authority: IC 25-31-1-7; IC 25-31-1-8
Affected: IC 23-18-2-2; IC 25-31-1-18

Sec. 1. A limited liability company doing business in Indiana may practice or offer to practice engineering only if that practice is carried on under the responsible direction and supervision of a registered professional engineer who is a full-time employee or member of the company. All plans, sheets of designs, specifications, reports, studies, or other engineering documents that require certification and are prepared by the personnel of a business must carry the signature and seal of the registered professional engineer who is in responsible charge of the professional engineering work. *(State Board of Registration for Professional Engineers; 864 IAC 1.1-14-1; filed Nov 7, 2003, 12:00 p.m.: 27 IR 875)*

SECTION 3. **SECTION 1 of this document takes effect January 3, 2004.**

LSA Document #03-125(F)
Notice of Intent Published: 26 IR 3076
Proposed Rule Published: August 1, 2003; 26 IR 3737
Hearing Held: September 18, 2003
Approved by Attorney General: October 23, 2003
Approved by Governor: November 6, 2003
Filed with Secretary of State: November 7, 2003, 12:00 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #03-41(F)

DIGEST

Amends 865 IAC 1-13 to revise the continuing education requirements for registered land surveyors. Amends 865 IAC 1-14 to revise the requirements for land surveyors continuing education providers. Repeals 865 IAC 1-13-20 and 865 IAC 1-14-20 to eliminate the provisions that would cause the continuing education rules and continuing education provider rules to expire on August 1, 2004. Effective 30 days after filing with the secretary of state.

865 IAC 1-13-4
865 IAC 1-13-7
865 IAC 1-13-20
865 IAC 1-14-13
865 IAC 1-14-14
865 IAC 1-14-15
865 IAC 1-14-20

SECTION 1. 865 IAC 1-13-4 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-4 Length of instruction hour; length of course
Authority: IC 25-21.5-2-14; IC 25-21.5-8-7
Affected: IC 25-21.5

Sec. 4. **(a)** One (1) hour of continuing education must contain at least fifty (50) minutes of instruction.

(b) A continuing education course shall be a minimum of one (1) hour instruction period. *(State Board of Registration for Land Surveyors; 865 IAC 1-13-4; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1026; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 875)*

SECTION 2. 865 IAC 1-13-7 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-7 Elective topics
Authority: IC 25-21.5-2-14; IC 25-21.5-8-7
Affected: IC 25-21.5

Sec. 7. **(a)** To qualify for renewal, a registered land surveyor must complete eighteen (18) hours of continuing education in any of the following elective topics:

(1) College level mathematics.

(2) College level physical sciences.

(3) Federal and state laws, rules, regulations, and practices pertaining to the establishment or reestablishment of land boundaries and the practice of land surveying in Indiana.

(4) Preparation and analysis of legal descriptions of interests in land.
(5) The design, planning, and platting of subdivisions.
(6) Preparation of plans and profiles for roads, storm drainage, and sanitary sewer extensions for subdivisions.
(7) The ethical, economic, and legal principles that pertain to the practice of land surveying.
(8) Distance and direction measurements, including statistical analysis.
(9) Topographic and hydrographic surveying.
(10) Photogrammetry.
(11) Surveying applications, such as GIS, LIS, GPS.
(12) Advanced surveying procedures and equipment.
(13) Computer applications for land surveyors.
(14) College level communication, such as public speaking and technical writing.
(15) The topics listed in section 6 of this rule.

(b) No single elective course may count for more than twelve (12) hours of continuing education. *(State Board of Registration for Land Surveyors; 865 IAC 1-13-7; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1026; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 875)*

SECTION 3. 865 IAC 1-14-13 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-14-13 Certifications of completion
Authority: IC 25-21.5-2-14; IC 25-21.5-8-7
Affected: IC 25-21.5

Sec. 13. (a) Course providers shall provide the registered land surveyor who successfully completes an approved course a ~~certificate~~ **certification** of course completion that must include the following information:
(1) Name, telephone number, and address of the provider.
(2) Name ~~address,~~ and license number of the participant.
(3) Title of the course.
(4) Course location.
(5) Date of the course.
(6) Number of approved course hours.
(7) Name, address, and signature of the instructor.

(b) The course provider must complete the ~~certificate~~ **certification** of completion in its entirety.

(c) In lieu of a certification, the board may accept documentation that provides the information that is contained in subsection (a).

(d) The board may accept a college transcript in lieu of a certification of course completion. *(State Board of Registration for Land Surveyors; 865 IAC 1-14-13; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1030; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 876)*

SECTION 4. 865 IAC 1-14-14 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-14-14 Courses not completed
Authority: IC 25-21.5-2-14; IC 25-21.5-8-7
Affected: IC 25-21.5

Sec. 14. **(a)** Course providers, **at their discretion,** may ~~not~~ grant to registered land surveyors partial credit **in proportion to the amount of time that a registered land surveyor attended the continuing education course**. **After one (1) hour of instruction, course providers may grant registered land surveyors credit in one-half (½) hour increments.**

(b) To receive **full** credit for a course, a registered land surveyor must be present for the entire course. *(State Board of Registration for Land Surveyors; 865 IAC 1-14-14; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1030; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 876)*

SECTION 5. 865 IAC 1-14-15 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-14-15 Reporting attendance to the board
Authority: IC 25-21.5-2-14; IC 25-21.5-8-7
Affected: IC 25-21.5

Sec. 15. **(a)** Course providers shall, not more than thirty (30) days after a course is presented, submit the following to the board:
(1) An alphabetical list of all registered land surveyors who attended the course.
(2) A certified statement of the hours of continuing education to be credited to each registrant.

(b) Course providers may submit the list required in subsection (a) electronically. *(State Board of Registration for Land Surveyors; 865 IAC 1-14-15; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1030; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 876)*

SECTION 6. THE FOLLOWING ARE REPEALED: 865 IAC 1-13-20; 865 IAC 1-14-20.

LSA Document #03-41(F)
Notice of Intent Published: 26 IR 1964
Proposed Rule Published: August 1, 2003; 26 IR 3739
Hearing Held: September 12, 2002
Approved by Attorney General: October 23, 2003
Approved by Governor: November 6, 2003
Filed with Secretary of State: November 7, 2003, 11:45 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #03-124(F)

DIGEST

Amends 876 IAC 1-1-19 to establish an application fee for a licensee who submits a transfer application to terminate his or her association with a principal broker. Effective 30 days after filing with the secretary of state.

876 IAC 1-1-19

SECTION 1. 876 IAC 1-1-19 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-19 Termination of association with principal broker; duties of parties

Authority: IC 25-1-8-2; IC 25-34.1-2-5
Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 19. Any licensee, upon termination of his **or her** association with a principal broker, shall turn over to ~~said~~ **the** principal broker any and all listings obtained during his association unless otherwise stipulated by a written contract. ~~Said~~ **The** listings shall remain the property of the principal broker whether originally given to the licensee by the principal broker or copied from the records of ~~said~~ **the** broker. The principal broker of a terminated salesperson is responsible for submitting to the commission within five (5) business days of the termination, a notification form provided by the commission and signed by the terminating broker and attesting to the termination. In the event the terminated licensee is transferring to a new principal broker, it shall be the responsibility of the licensee to provide the commission with a transfer application signed by the licensee and the new principal broker ~~Said~~ **and pay a ten dollar ($10) transfer fee. The** licensee is responsible for submitting to the commission the transfer application at the time of this association with another principal broker. The ~~broker-salesperson,~~ **broker-salesperson's or** salesperson's license will remain in the commission's ~~inactive~~ **unassigned** file **of licensees who are currently not associated with a principal broker** until ~~such~~ **a** transfer application is timely received. A licensee who terminates his association with a principal broker must immediately notify the commission of his **or her** change of address. *(Indiana Real Estate Commission; Rule 20; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 799; filed Jan 16, 1979, 11:55 a.m.: 2 IR 315; filed Mar 13, 1980, 2:40 p.m.: 3 IR 648; filed Dec 11, 1986, 10:40 a.m.: 10 IR 877; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Oct 23, 2003, 4:00 p.m.: 27 IR 877)*

LSA Document #03-124(F)
Notice of Intent Published: 26 IR 3076
Proposed Rule Published: August 1, 2003; 26 IR 3744
Hearing Held: August 28, 2003
Approved by Attorney General: October 8, 2003
Approved by Governor: October 23, 2003
Filed with Secretary of State: October 23, 2003, 4:00 p.m.
Incorporated Documents Filed with Secretary of State: None

Notice of Recall

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #02-317

Under IC 4-22-2-40, LSA Document #02-317, printed at 26 IR 3383, is recalled.

TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #03-304(E)

DIGEST

Temporarily amends 45 IAC 2.2 to conform to HEA 1815-2003. Authority: HEA 1815, SECTION 42. Effective January 1, 2004.

SECTION 1. (45 IAC 2.2-1-1) (a) Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

(b) Unitary Transaction - Public Utility. For purposes of the state gross retail tax and use tax, all public utility services and commodities subject to said taxes invoiced in a single billing or statement, including a minimum charge, submitted to a consumer for payment shall constitute a unitary transaction.

(c) Retail Transaction. The state gross retail tax is imposed on retail transactions made in Indiana. Three **(3)** general categories are designated as "retail transactions". The first category is described as transactions of a retail merchant that constitute selling at retail as described in IC 6-2.5-4-1. The second category is described as transactions of a retail merchant that constitute making a wholesale sale as described in IC 6-2.5-4-2. The third category is described as a transaction that is described in any other section of IC 6-2.5-4. **A transaction is made in Indiana if it is sourced to Indiana pursuant to IC 6-2.5-12, IC 6-2.5-13, or IC 6-8.1-15.**

(d) Casual Sales. The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles and sales of rental property. A casual sale is an isolated or occasional sale by the owner of tangible personal property purchased or otherwise acquired for his use or consumption, where he is not regularly engaged in the business of making such sales.

(e) Retail Unitary Transaction. Regulatory definition of "retail unitary transaction" is used synonymously with the act *[IC 6-2.5]*.

(f) Person. Regulatory definition of "person" is used synonymously with the act *[IC 6-2.5]*.

(g) Department. Regulatory definition of "department" as the Indiana department of state revenue is used synonymously with the act *[IC 6-2.5]*.

(h) Gross Retail Income. Regulatory definition of "gross retail income" is used synonymously with the act *[IC 6-2.5]*.

(i) Gross Retail Income of a Public Utility or Power Subsidiary. Gross retail income includes all gross retail income including minimum charge, flat charge, membership fee, or any other form of charge or billing.

(j) Like Kind Exchange: Additional Consideration. Nontaxability extends only to the amount of value of the property received. Any additional consideration, commonly known as "boot", received either in cash or property of unlike kind, must be reported for taxation at actual value. However, when any property is clearly used as a medium of exchange in lieu of cash, the element of taxable exchange will be present.

(k) Like Kind Exchange: Limited to Two Parties. Nontaxable "exchanges" include only transactions for a swap or barter of property between two **(2)** parties. Property received in an exchange transaction in which a third party is involved, with or without property, is subject to gross retail tax. This rule is not meant to deny nontaxability of exchanges where one **(1)** or both of the parties in a two-party exchange employ an agent in carrying out the agreement.

(l) Like Kind Exchange: Property to be Owned by Parties at Time of Exchange. Nontaxable "exchanges" include only transactions in which the property exchanged is owned by the parties thereto at the time the exchange agreement is entered into. Transactions in which the property to be exchanged is acquired by one **(1)** party after the agreement to exchange has been arranged are taxable. The exchange agreement must specify the definite units or quantity of property to be exchanged. However, "retail merchants" are allowed to consider as nontaxable the full value of tangible personal property of like kind received in allowable exchanges, even though ownership of the property received is encumbered by a conditional sales contract, retail installment contract, or a chattel mortgage.

(m) Internal Revenue Code. Regulatory definition of "Internal Revenue Code" as the Internal Revenue Code of 1986, is used synonymously with the act *[IC 6-2.5]*.

(n) Retail Merchant. Regulatory definition of "retail merchant" is used synonymously with the act *[IC 6-2.5]*.

(o) Tax Year or Taxable Year. Regulatory definition of "tax year" or "taxable year" is used synonymously with the act *[IC 6-2.5]*.

(p) Alcoholic beverages. Regulatory definition of "Alcoholic beverages" is used synonymously with the act *[IC 6-2.5]*.

(q) Candy. Regulatory definition of "Candy" is used

synonymously with the act *[IC 6-2.5]*.

(r) Computer. Regulatory definition of "Computer" is used synonymously with the act *[IC 6-2.5]*.

(s) Computer software. Regulatory definition of "Computer software" is used synonymously with the act *[IC 6-2.5]*.

(t) Delivered electronically. Regulatory definition of "Delivered electronically" is used synonymously with the act *[IC 6-2.5]*.

(u) Dietary supplement. Regulatory definition of "Dietary supplement" is used synonymously with the act *[IC 6-2.5]*.

(v) Drug. Regulatory definition of "Drug" is used synonymously with the act *[IC 6-2.5]*.

(w) Durable medical equipment. Regulatory definition of "Durable medical equipment" is used synonymously with the act *[IC 6-2.5]*.

(x) Electronic. Regulatory definition of "Electronic" is used synonymously with the act *[IC 6-2.5]*.

(y) Food and food ingredients. Regulatory definition of "Food and food ingredients" is used synonymously with the act *[IC 6-2.5]*.

(z) Lease or Rental. Regulatory definition of "Lease" or "Rental" is used synonymously with the act *[IC 6-2.5]*.

SECTION 2. **(a) Mobility enhancing equipment. Regulatory definition of "Mobility enhancing equipment" is used synonymously with the act *[IC 6-2.5]*.**

(b) Prescription. Regulatory definition of "Prescription" is used synonymously with the act *[IC 6-2.5]*.

(c) Prewritten computer software. Regulatory definition of "Prewritten computer software" is used synonymously with the act *[IC 6-2.5]*.

(d) Prosthetic device. Regulatory definition of "Prosthetic device" is used synonymously with the act *[IC 6-2.5]*.

(e) Soft drinks. Regulatory definition of "Soft drinks" is used synonymously with the act *[IC 6-2.5]*.

(f) Tangible personal property. Regulatory definition of "Tangible personal property" is used synonymously with the act *[IC 6-2.5]*.

SECTION 3. (45 IAC 2.2-4-1) (a) ~~Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant".~~ **A person is a retail merchant making a retail transaction when he engages in selling at retail.**

(b) ~~All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:~~ **A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:**

(1) ~~The price arrived at between purchaser and seller.~~ **acquires tangible personal property for the purpose of resale; and**

(2) ~~Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.~~ **transfers that property to another person for consideration.**

~~(3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.~~

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described 45 IAC 2.2-4-4.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any service; and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of subdivision (2), charges for delivery are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is

the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges.

SECTION 4. (45 IAC 2.2-4-27) (a) In general, the gross receipts from renting or leasing tangible personal property are taxable **other than receipts from renting or leasing to another for the purpose of subrenting or subleasing.** This regulation *[45 IAC 2.2]* only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.

(b) Every person engaged in the business of the rental or leasing of tangible personal property, other than a public utility, shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing.

(c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

(d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental of lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

(2) Rental or lease period. For purposes of the imposition of the gross retail tax or use tax on rental or leasing transactions, each period for which a rental is payable shall be considered a complete transaction. In the case of a weekly rate, each week shall be considered a complete transaction. In the case of a continuing lease or contract, with or without a definite expiration date, where rental payments are to be made monthly or on some other periodic basis, each payment period shall be considered a completed transaction.

(3) Renting or leasing property with an operator **shall not be subject to gross retail tax or use tax if:**

(A) ~~The renting or leasing of tangible personal property, together with the services of an operator shall be subject to the tax when control of the property is exercised by the lessee. Control is exercised when the lessee has exclusive use of the property, and the lessee has the right to direct the manner of the use of the property. If these conditions are present, control is deemed to be exercised even though it is not actually exercised.~~ **the operator is necessary for the equipment to perform as designed; and**

(B) ~~The rental of tangible personal property together with an operator as part of a contract to perform a specific job in a manner to be determined by the owner of the property or the operator shall be considered the performance of a service rather than a rental or lease provided the lessee cannot exercise control over such property and operator.~~ **the operator does more than maintain, inspect, or set up the tangible personal property.**

~~(C)~~ **(4)** When tangible personal property is rented or leased together with the service of an operator, the gross retail tax or use tax is imposed on the property rentals. The tax is not imposed upon the charges for the operator's services, provided such charges are separately stated on the invoice rendered by the lessor to the lessee.

~~(D)~~ **(5)** Notwithstanding any other provision of this regulation *[45 IAC 2.2]* any lessee leasing or renting a vehicle(s) from any lessor, including an individual lessor, with or without operators, driver(s), or even if the operator (driver) himself is the lessor, regardless of control exercised, shall not be subject to the gross retail tax or use tax, if the leased or rented vehicle(s) are directly used in the rendering of public transportation.

~~(4)~~ **(6)** Supplies furnished with leased property. A person engaged in the business of renting or leasing tangible personal property is considered the consumer of supplies, fuels, and other consumables which are furnished with the property which is rented or leased.

SECTION 5. (45 IAC 2.2-5-1) (a) Definitions. "Farmers" means only those persons occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for sale. These terms are limited to those persons, partnerships, or corporations regularly engaged in the commercial production for sale of vegetables,

fruits, crops, livestock, poultry, and other food or agricultural products. Only those persons, partnerships, or corporations whose intention it is to produce such food or commodities at a profit and not those persons who intend to engage in such production for pleasure or as a hobby qualify within this definition.

"Food", as used in this chapter, includes food ingredients.

"Farming" means engaging in the commercial production of food or agricultural commodities as a farmer.

"To be directly used by the farmer in the direct production of food or agricultural commodities" requires that the property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(b) The state gross retail tax shall not apply to:
(1) Sales to farmers of animals and poultry used for breeding purposes are exempt from tax provided the farmer used such animals and poultry to breed animals and poultry to be used by the farmer in the production of food or agricultural commodities.
(2) Sales to farmers of animals and poultry to be directly used by the farmer in the direct production of food and agricultural commodities are exempt from tax. Domestic animals and birds, pets, game animals and birds, furbearing animals, fish, and other animals or poultry not directly used by the farmer in the direct production of food or agricultural commodities are subject to tax. Baby chicks, ducklings, geese, turkey poults, hatching eggs, pigs, hogs, lambs, sheep, livestock, calves, and cows are exempt from tax, provided that they are directly used by the farmer in the direct production of food or agricultural commodities for sale.
(3) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, or poultry consumption (either for sale or for further use in producing such food and agricultural commodities for sale) of animal and poultry life to be directly used by the purchaser in the direct production of food and agricultural commodities.
(4) Sales of animals and poultry to a farmer to be directly used by the farmer in the direct production of food or agricultural commodities (either for sale or for further use in producing such food or commodities for sale) for human, animal, or poultry consumption are exempt from tax.

(c) Energy Equipment.
(1) Equipment used to modify energy purchased from public utilities for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.
(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or nonintegral manner, the exemption shall only apply to the percentage (%) of use of the equipment used in the exempt manner.

SECTION 6. (45 IAC 2.2-5-27) ~~(a) The term~~ "Person licensed to issue a prescription" ~~shall include~~ **means** only those persons licensed or registered to fit and/or dispense such devices.

~~(b) Definition: The term "prescribed" shall mean the issuance by a person described in paragraph 1 of this regulation *[subsection (a) of this section]* of a certification in writing that the use of the medical equipment supplies and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body.~~

SECTION 7. (45 IAC 2.2-5-28) (a) Sales of ~~artificial limbs~~ **prosthetic devices** which are prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(b) The sale to the user of orthopedic devices prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(c) For purposes of the state gross retail tax, orthopedic devices are designed to correct deformities and/or injuries to the human skeletal system including the spine, joints, bones, cartilages, ligaments, and muscles.

(d) The sale to the user of dental prosthetic devices prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(e) For the purposes of the state gross retail tax, dental prosthetic devices are devices used for the replacement of missing teeth, as by bridges or artificial dentures.

(f) The sale to the user of eyeglasses or contact lenses prescribed by one licensed to do so is exempted from sales tax. The exemption to the patient applies whether the item is sold by the practitioner or by a dispensing optician.

(g) The sale to the user of **durable** medical equipment, supplies, or devices prescribed by one licensed to issue such a prescription are exempt from sales and use tax.

(h) The term **"durable** medical equipment, supplies or devices", as used in this ~~paragraph,~~ **section,** are those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body.

SECTION 8. (45 IAC 2.2-5-29) ~~(a)~~ Rentals of **durable** medical equipment, supplies, and devices, described in ~~Regulation 6-2.5-5-18(a)(020)~~ **45 IAC 2.2-5-28** are exempt from the

state gross retail tax if the rentals are prescribed by a person licensed to issue the prescription.

~~(b) The terms "person licensed to issue prescription" and "prescribed" are defined in Regs. 6-2.5-5-18(a)(010)(I) and (2) *[45 IAC 2.2-5-27]*.~~

SECTION 9. (45 IAC 2.2-5-38) The gross retail tax act exempts food for human consumption. Primarily the exemption is limited to sales by grocery stores, supermarkets, and similar type businesses of items which are commonly known as grocery food.

SECTION 10. (45 IAC 2.2-5-39) (a) ~~The gross retail tax act specifies the items which constitute tax exempt~~ **Sales of food and** food **ingredients** for human consumption **are exempt from the state gross retail tax.**

(b) ~~A number of items normally sold by grocery stores, supermarkets, and similar type of businesses are classified in this regulation *[45 IAC 2.2]* under the heading "nontaxable items". These examples are for illustrative purposes and are not intended to be all-inclusive.~~

~~"NONTAXABLE ITEMS"~~

~~Baby Foods~~
~~Bakery Products~~
~~Baking Soda~~
~~Bouillon Cubes~~
~~Cereal & Cereal Products~~
~~Chocolate (for cooking purposes only)~~
~~Cocoa~~
~~Coconut~~
~~Coffee & Coffee Substitutes~~
~~Condiments~~
~~Cookies~~
~~Crackers~~
~~Dehydrated Fruit & Vegetables~~
~~Diet Foods~~
~~Eggs & Egg Products~~
~~Extracts, Flavoring as an Ingredient of Food Products~~
~~Fish & Fish Products~~
~~Flour~~
~~Food Coloring~~
~~Fruit & Fruit Products, including Fruit Juices~~
~~Gelatin~~
~~Health Foods~~
~~Honey~~
~~Ice Cream, Toppings, and Novelties~~
~~Jams~~
~~Jellies~~
~~Ketchup~~
~~Lard~~
~~Marshmallows~~
~~Mayonnaise~~
~~Meat & Meat Products~~
~~Milk & Milk Products~~
~~Mustard~~
~~Nuts, including salted, but not chocolate or candy-coated~~
~~Oleomargarine~~
~~Olive Oil~~
~~Olives~~
~~Peanut Butter~~
~~Pepper~~
~~Pickles~~
~~Popcorn~~
~~Potato Chips~~
~~Powdered Drink Mixes (Presweetened or Natural)~~
~~Relishes~~
~~Salad Dressings and Dressing Mixes~~
~~Salt~~
~~Sauces~~
~~Sherbets~~
~~Shortenings~~
~~Soups~~
~~Spices~~
~~Sandwich Spreads~~
~~Sugar, Sugar Products, and Sugar Substitutes~~
~~Syrups~~
~~Tea~~
~~Vegetables & Vegetable Products (Excluding Salad Bars)~~
~~Vegetable Juices~~
~~Vegetable Oils~~
~~Yeast~~

~~Some items in the above categories will be subject to tax if they are sold in small quantities and, therefore, are prepared for immediate consumption.~~

The following items are exempt from sales and use tax if sold without eating utensils provided by the seller:

(1) Food sold by a seller whose proper primary NAAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).

(2) Food sold in an unheated state by weight or volume as a single item.

(3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

SECTION 11. (45 IAC 2.2-5-40) ~~The gross retail tax act specifies items which do not constitute "food for human consumption" exempted by the Act *[IC 6-2.5]*. A number of items normally sold by grocery stores, supermarkets, and similar type businesses are classified in this regulation *[45 IAC 2.2]* under the heading "taxable items". These examples are for illustrative purposes and are not to be all-inclusive.~~

~~"TAXABLE ITEMS"~~

~~Alcoholic Beverages~~
~~Candy & Confectionery~~
~~Candied Apples~~
~~Caramel Coated Popcorn~~
~~Chewing Gum~~
~~Chocolate Covered Nuts~~

~~Cocktail (dry or liquid) Mixes~~
~~Dietary Supplements in any form~~
~~Household Supplies (Brooms, Mops, Etc.)~~
~~Ice~~
~~Liver Oils, such as Cod and Halibut~~
~~Lozenges~~
~~Nonprescription Medicines~~
~~Paper Products~~
~~Pet Foods and Supplies~~
~~Soap & Soap Products~~
~~Soft Drinks, Sodas & Similar Beverages~~
~~Tobacco Products~~
~~Tonics, Vitamins and other Dietary Supplements~~
~~Toothpaste~~
~~Water, including mineral, bottled carbonated & Soda~~

The following items are not exempt from sales and use tax:

(1) candy;

(2) alcoholic beverages;

(3) soft drinks;

(4) food sold through a vending machine;

(5) food sold in a heated state or heated by the seller;

(6) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent foodborne illnesses); or

(7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

SECTION 12. 45 IAC 2.2-4-3, 45 IAC 2.2-5-42, 45 IAC 2.2-5-43, 45 IAC 2.2-5-44, AND 45 IAC 2.2-6-12 ARE TEMPORARILY REPEALED.

SECTION 13. **SECTIONS 1 through 12 of this document expire July 1, 2005.**

LSA Document #03-304(E)
Filed with Secretary of State: November 10, 2003, 3:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-287(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 010. Effective October 16, 2003.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 010, A Holiday Story".**

SECTION 2. **Pull-tab tickets for pull-tab game number 010 shall sell for fifty cents ($0.50) per ticket.**

SECTION 3. **Pull-tab game number 010 is a match 3 game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 010 shall contain fifteen (15) play symbols and play symbol captions arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 010 shall consist of the following possible play symbols:**

(1) A picture of a bunny
BUNNY

(2) A picture of a lamp
LAMP

(3) A picture of a page of homework
HOMEWORK

(4) A picture of a bull's eye with a gun
B.B. GUN

(5) A picture of a pair of eyeglasses
GLASSES

(6) A picture of a boy with his tongue stuck to a pole
BOY

(7) A picture of a waiter with serving trays
FA-RA-RA-RA-RA

(8) A picture of a bar of soap
SOAP

SECTION 5. **A row on a pull-tab ticket in pull-tab game number 010 which contains three (3) identical play symbols is not a match 3 winning row unless all of the following are true:**

(1) The play symbols and play symbol captions in the line are consistent with those specified in SECTION 4 of this rule *[document]***.**

(2) The three (3) play symbols and play symbol captions in the line are bisected by a green arrow.

(3) The prize amount appears on the left side of the line in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this rule** *[document]***, the holder of a valid pull-tab ticket for pull-tab game number 010 containing a match 3 winning row is entitled to a prize, the amount and the approximate number of which are as follows for each three million (3,000,000) pull-tab tickets in pull-tab game number 010:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
3 pairs of eyeglasses	$ 0.50	167,104
3 B.B. guns	$ 1.00	22,380
3 homeworks	$ 5.00	7,460
3 lamps	$10.00	2,984
3 bunnies	$100	1,492

SECTION 7. **A total of approximately one million (1,000,000) pull-tab tickets will be initially available for pull-tab game number 010. The odds of winning a prize in pull-tab game 010 are approximately 1 in 4.98. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 8. **The last day to claim prizes in pull-tab game number 010 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer.**

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Filed with Secretary of State: October 16, 2003, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-288(E)

DIGEST

Temporarily adds rules concerning instant game number 668. Effective October 16, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 668, Lucky Diamonds".**

SECTION 2. **Instant tickets in instant game number 668 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 668 shall contain twenty-two (22) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Twenty (20) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" arranged in pairs representing numbers or pictures and prize amounts.**

(b) The play symbols and play symbol captions in instant game number 668, 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
ELVN
(12) 12
TWLV
(13) 13
THRTN
(14) 14
FORTN
(15) 15
FIFTN
(16) 16
SIXTN
(17) 17
SVNTN
(18) 18
EGHTN
(19) 19
NINTN
(20) 20
TWTY
(21) A picture of a diamond shape
WIN
(22) A picture of a diamond stone
WIN ALL

(c) The play symbols and play symbol captions representing prize amounts in instant game number 668 shall consist of the following possible play symbols and play symbol captions:

(1) $2.00
TWO
(2) $3.00
THREE
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $10.00
TEN
(6) $20.00
TWENTY
(7) $50.00
FIFTY

(8) $100
ONE HUN
(9) $500
FIVE HUN
(10) $1,000
ONE THOU
(11) $10,000
TEN THOU

SECTION 4. **The holder of a ticket in instant game number 668 shall remove the latex material covering the twenty-two (22) play symbols and play symbol captions. If one (1) or more of "YOUR NUMBERS" match either of the "LUCKY NUMBERS", the holder is entitled to the prize amount paired with the matched number. If the play symbol of a picture of a diamond shape with the play symbol caption "WIN" is exposed in the "YOUR NUMBERS" area, the player is automatically entitled to the paired prize amount. If the play symbol of a picture of a diamond stone with the play symbol caption "WIN ALL" is exposed in the "YOUR NUMBERS" area, the player is automatically entitled to all paired prize amounts. The number of matches, paired prize amount play symbols, total prize amounts, and number of winners in instant game number 668 are as follows:**

Number of Matches and Paired Prize Amount Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	300,000
2 – $2.00	$4	105,000
1 – $4.00	$4	105,000
1 – $2.00 + 1 – $3.00 with diamond shape	$5	45,000
1 – $5.00	$5	45,000
5 – $2.00	$10	30,000
2 – $5.00	$10	7,500
3 – $2.00 + 1 – $4.00 with diamond shape	$10	7,500
1 – $10.00	$10	15,000
3 – $5.00	$15	15,000
5 – $3.00	$15	15,000
10 – $2.00 with diamond stone	$20	7,500
5 – $4.00	$20	7,500
2 – $10.00	$20	7,500
1 – $20	$20	7,500
10 – $5.00 with diamond stone	$50	1,000
3 – $10.00 + 1 – $20.00 with diamond shape	$50	1,000
1 – $50	$50	1,000
10 – $10.00 with diamond stone	$100	250
8 – $10.00 + 1 – $20.00 with diamond shape	$100	250
2 – $50.00	$100	125
1 – $100	$100	125
10 – $50.00 + diamond stone	$500	12
1 – $500	$500	12
10 – $100 with diamond stone	$1,000	8
1 – $1,000	$1,000	8
1 – $10,000	$10,000	8

SECTION 5. **(a) There shall be approximately three million (3,000,000) instant tickets initially available in instant game number 668.**

(b) The odds of winning a prize in instant game number 668 are approximately 1 in 4.14.

(c) All reorders of tickets for instant game number 668 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 668 is October 31, 2004.**

SECTION 7. **This document expires November 30, 2004.**

LSA Document #03-288(E)
Filed with Secretary of State: October 16, 2003, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-289(E)

DIGEST

Temporarily adds rules concerning instant game number 669. Effective October 16, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 669, Queen of Hearts".**

SECTION 2. **Instant tickets in instant game number 669 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 669 shall contain twenty-four (24) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. There shall be eight (8) separate and independent games labeled "HAND 1", " HAND 2", "HAND 3", "HAND 4", "HAND 5", "HAND 6", "HAND 7", and "HAND 8", respectively. Each game shall contain one (1) play symbol and play**

symbol caption representing a playing card in the area labeled "YOUR CARD" and shall contain one (1) play symbol and play symbol caption representing a playing card in the area labeled "DEALER'S CARD". Each game shall contain a play symbol and play symbol caption representing a prize amount.

(b) The play symbols and play symbol captions, other that *[sic., than]* **those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:**

(1)	**2 TWO**
(2)	**3 THR**
(3)	**4 FOR**
(4)	**5 FIV**
(5)	**6 SIX**
(6)	**7 SVN**
(7)	**8 EGT**
(8)	**9 NIN**
(9)	**10 TEN**
(10)	**J JCK**
(11)	**Q DBL**
(12)	**K KNG**
(13)	**A ACE**

(c) The play symbols and play symbol captions of prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $2.00
TWO
(2) $3.00
THREE
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $10.00
TEN
(6) $15.00
FIFTEEN
(7) $20.00
TWENTY
(8) $50.00
FIFTY
(9) $100
ONE HUN
(10) $200
TWO HUN
(11) $1,000
ONE THOU
(12) $12,000
TLV THOU

SECTION 4. **(a) The holder of an instant ticket in instant game number 669 shall remove the latex material covering the twenty-four (24) play symbols and play symbol captions. If the play symbol and play symbol caption exposed in the "YOUR CARD" area has a higher value than the play symbol and play symbol caption exposed in the "DEALER'S CARD" area, the holder is entitled to the corresponding prize amount for that game. If a play symbol representing a picture of a "QUEEN" is exposed in the "YOUR CARD" area, the holder is entitled to double the corresponding prize amount. Play symbols and play symbol captions representing playing cards are valued in descending order with aces as the high cards and face cards valued at ten (10).**

(b) The number of winning plays and the associated prize amount play symbols, total prize amounts, and approximate number of winners in instant game number 669 are as follows:

Number of Winning Games and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	315,000
1 – $4.00	$4	210,000
1 – $2.00 + 1 – $3.00	$5	45,000
1 – $5.00	$5	45,000
1 – $2.00 with queen + 3 – $2.00	$10	30,000
1 – $5.00 with queen	$10	15,000
1 – $10.00	$10	15,000
5 – $3.00	$15	15,000
1 – $15.00	$15	15,000
6 – $2.00 + 2 – $4.00	$20	7,500
1 – $2.00 + 1 – $4.00 with queen + 2 – $5.00	$20	7,500
4 – $5.00	$20	7,500
1 – $20.00	$20	7,500
6 – $5.00 + 2 – $10.00	$50	375
1 – $10.00 + 1 – $20.00 with queen	$50	375
1 – $50	$50	375
6 – $10.00 + 2 – $20.00	$100	300
5 – $20.00	$100	300

1 – $100	**$100**	**300**
5 – $100	**$500**	**20**
6 – $100 + 2 – $200	**$1,000**	**18**
1 – $1,000	**$1,000**	**18**
1 – $12,000	**$12,000**	**9**

SECTION 5. **(a) There shall be approximately three million (3,000,000) instant tickets initially available in instant game number 669.**

(b) The odds of winning a prize in instant game number 669 are approximately 1 in 4.07.

(c) All reorders of tickets for instant game number 669 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 669 is October 31, 2004.**

SECTION 7. **This document expires November 30, 2004.**

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TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-290(E)

DIGEST

Temporarily adds rules concerning instant game number 670. Effective October 16, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 670, $250 Christmas Club".**

SECTION 2. **Instant tickets in instant game number 670 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 670 shall contain fourteen (14) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Twelve (12) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" and be arranged in pairs representing numbers and prize amounts.**

(b) The play symbols and play symbol captions in instant game number 670, 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

(c) The play symbols and play symbol captions representing prize amounts in instant game number 670 shall consist of the following possible play symbols and play symbol captions:
(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $5.00
FIVE
(5) $10.00
TEN
(6) $20.00
TWENTY
(7) $30.00
THIRTY
(8) $50.00
FIFTY
(9) $100
ONE HUN
(10) $250
TWOHUNFTY

SECTION 4. **The holder of a ticket in instant game**

number 670 shall remove the latex material covering the fourteen (14) play symbols and play symbol captions. If one (1) or more of "YOUR NUMBERS" match either of the "WINNING NUMBERS", the holder is entitled to the prize amount paired with the matched number. The matched prize play symbols, prize amounts, and number of winners in instant game number 670 are as follows:

Matched Prize Symbol	Prize Amount	Approximate Number of Winners
1 – $1.00	$1	571,200
2 – $1.00	$2	108,800
1 – $2.00	$2	95,200
3 – $1.00 + 1 – $2.00	$5	54,400
1 – $1.00 + 2 – $2.00	$5	27,200
1 – $2.00 + 1 – $3.00	$5	13,600
1 – $5.00	$5	13,600
1 – $1.00 + 2 – $2.00 + 1 – $5.00	$10	6,800
1 – $2.00 + 1 – $3.00 + 1 – $5.00	$10	6,800
2 – $5.00	$10	6,800
1 – $10.00	$10	6,800
2 – $5.00 + 2 – $10.00	$30	6,800
1 – $30.00	$30	6,800
3 – $10.00 + 1 – $20.00	$50	680
1 – $10.00 + 2 – $20.00	$50	680
1 – $50.00	$50	340
3 – $50.00 + 1 – $100	$250	170
1 – $50.00 + 2 – $100	$250	170
1 – $250	$250	136

SECTION 5. **(a) There shall be approximately four million (4,000,000) instant tickets initially available in instant game number 670.**

(b) The odds of winning a prize in instant game number 670 are approximately 1 in 4.40.

(c) All reorders of tickets for instant game number 670 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 670 is October 31, 2004.**

SECTION 7. **This document expires November 31, 2004.**

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TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-291(E)

DIGEST

Temporarily adds rules concerning instant game number 708. Effective October 16, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 708, Season's Greetings".**

SECTION 2. **Instant tickets in instant game number 708 shall sell for five dollars ($5) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 708 shall contain seventy-five (75) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. There shall be twenty-five (25) separate and independent games labeled "GAME 1", "GAME 2", "GAME 3", "GAME 4", "GAME 5", "GAME 6", "GAME 7", "GAME 8", "GAME 9", "GAME 10", "GAME 11", "GAME 12", "GAME 13", "GAME 14", "GAME 15", "GAME 16", "GAME 17", "GAME 18", "GAME 19", "GAME 20", "GAME 21", "GAME 22", "GAME 23", "GAME 24", "GAME 25", respectively. Each game shall contain three (3) play symbols and play symbol captions representing pictures and a prize amount.**

(b) The play symbols and play symbol captions, other that *[sic., than]* **those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:**
(1) A symbol representing a picture of a stocking
STKNG
(2) A symbol representing a picture of a snowman
SNMAN
(3) A symbol representing a picture of a mitten
MITTEN
(4) A symbol representing a picture of a wreath
WREATH
(5) A symbol representing a picture of earmuffs
EARMF
(6) A symbol representing a picture of a stocking hat
HAT
(7) A symbol representing a picture of a Christmas tree
TREE
(8) A symbol representing a picture of a drum
DRUM
(9) A symbol representing a picture of a sleigh
SLEIGH
(10) A symbol representing a picture of a candle
CANDLE
(11) A symbol representing a picture of a *[sic., an]* **ornament**
ORMNT

(12) A symbol representing a picture of a horn
HORN
(13) A symbol representing a picture of a gingerbread cookie
GBMAN
(14) A symbol representing a picture of a candy cane
CANE
(15) A symbol representing a picture of a bag of toys
TOYS
(16) A symbol representing a picture of holly with berries
HOLLY
(17) A symbol representing a picture of a bell
BELL
(18) A symbol representing a picture of a reindeer
RNDEER
(19) A symbol of 2X
2TIMES
(20) A symbol of 25X
25TIMES

(c) The play symbols and play symbol captions of prize amounts shall consist of the following possible play symbols and play symbol captions:
(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $5.00
FIVE
(5) $6.00
SIX
(6) $7.00
SEVEN
(7) $10.00
TEN
(8) $15.00
FIFTEEN
(9) $20.00
TWENTY
(10) $25.00
TWY FIVE
(11) $30.00
THIRTY
(12) $35.00
THY FIVE
(13) $40.00
FORTY
(14) $50.00
FIFTY
(15) $75.00
SVTY FIVE
(16) $100
ONE HUN
(17) $200
TWO HUN
(18) $250
TWO FTY
(19) $400
FOUR HUN
(20) $500
FIVE HUN
(21) $1,000
ONE THOU
(22) $2,000
TWO THOU
(23) $2,500
TWY FIVE HUN
(24) $5,000
FIVE THOU
(25) $10,000
TEN THOU
(26) $50,000
FTY THOU

SECTION 4. **(a) The holder of an instant ticket in instant game number 708 shall remove the latex material covering the seventy-five (75) play symbols and play symbol captions. If the play symbol and play symbol caption exposed in each game match each other, the holder is entitled to the corresponding prize amount for that game. If the play symbol "2X" is exposed, the holder is entitled to double the corresponding prize amount. If the play symbol "25X" is exposed, the holder is entitled to twenty-five (25) times the corresponding prize amount. A holder may win up to twenty-five (25) times on a ticket.**

(b) The number of winning games and the associated prize amount play symbols, total prize amounts, and approximate number of winners in instant game number 708 are as follows:

Number of Winning Games and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $2.00 + 1 – $3.00	$5	224,400
1 – $5.00	$5	204,000
10 – $1.00	$10	20,400
1 – $6.00 + 2 – $2.00	$10	10,200
1 – $10.00	$10	20,400
5 – $1.00 + 1 – $5.00 2 times	$15	20,400
1 – $15.00	$15	20,400
1 – $20.00	$20	10,200
3 – $2.00 + 2 – $7.00	$20	10,200
1 – $1.00 25 times	$25	20,400
1 – $25.00	$25	20,400
20 – $1.00 + 1 – $5.00 2 times	$30	5,950
6 – $5.00	$30	5,950
1 – $30.00	$30	5,950
1 – $2.00 25 times	$50	3,570

1 – $15.00 + 1 – $35.00	**$50**	**1,785**
1 – $40.00 + 1 – $10.00	**$50**	**850**
5 – $6.00 + 1 – $10.00 2 times	**$50**	**850**
1 – $50.00	**$50**	**3,400**
10 – $10.00	**$100**	**1,275**
4 – $25.00	**$100**	**2,550**
1 – $50.00 2 times	**$100**	**680**
1 – $75.00 + 1 – $25.00	**$100**	**595**
1 – $100	**$100**	**2,550**
25 – $20.00	**$500**	**272**
1 – $500	**$500**	**255**
1 – $20.00 25 times + 20 – $25.00	**$1,000**	**17**
1 – $1,000	**$1,000**	**17**
5 – $200	**$1,000**	**17**
1 – $5,000	**$5,000**	**5**
20 – $250	**$5,000**	**5**
1 – $10,000	**$10,000**	**1**
25 – $400	**$10,000**	**3**
4 – $2,500	**$10,000**	**2**
1 – $2,000 25 times	**$50,000**	**2**
1 – $50,000	**$50,000**	**2**

SECTION 5. **(a) There shall be approximately two million (2,000,000) instant tickets initially available in instant game number 708.**

(b) The odds of winning a prize in instant game number 708 are approximately 1 in 3.30.

(c) All reorders of tickets for instant game number 708 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 708 is October 31, 2004.**

SECTION 7. **This document expires November 30, 2004.**

LSA Document #03-291(E)
Filed with Secretary of State: October 16, 2003, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-292(E)

DIGEST

Adds 65 IAC 4-333 concerning instant game number 707. Effective October 16, 2003.

65 IAC 4-333

SECTION 1. 65 IAC 4-333 IS ADDED TO READ AS FOLLOWS:

Rule 333. Instant Game 707

65 IAC 4-333-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this instant game is "Instant Game Number 707, Casino 7's". *(State Lottery Commission; 65 IAC 4-333-1; emergency rule filed Oct 16, 2003, 2:45 p.m.: 27 IR 891)*

65 IAC 4-333-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Instant tickets in instant game number 707 shall sell for seven dollars ($7) per ticket. *(State Lottery Commission; 65 IAC 4-333-2; emergency rule filed Oct 16, 2003, 2:45 p.m.: 27 IR 891)*

65 IAC 4-333-3 Instant ticket layout
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. (a) Each instant ticket in instant game number 707 shall contain forty (40) play symbols and play symbol captions arranged among seven (7) separate and independent games each concealed under a spot of latex material.

(b) The game on the upper right side of each instant ticket shall be labeled "1" and shall contain six (6) play symbols and play symbol captions representing prize amounts.

(c) The game in the upper left side of each instant ticket shall be labeled "2" and shall contain six (6) play symbols and play symbol captions arranged in a matrix of two (2) rows and three (3) columns. The rows shall be labeled "ROW 1" and "ROW 2", respectively. The first column shall be labeled "YOURS", the second column shall be labeled "THEIRS", and the last column shall be labeled "PRIZE".

(d) The game across from "2" on each instant ticket shall be labeled "3" and shall contain ten (10) play symbols and play symbol captions. Nine (9) play symbols and play symbol captions representing numbers shall be arranged in a matrix of three (3) rows and three (3) columns. One (1) play symbol and play symbol caption representing a prize amount shall appear in the "PRIZE" box.

(e) The game below game "2" on each instant ticket shall be labeled "4" and shall contain seven (7) play symbols and play symbol captions. Six (6) play symbols and play symbol captions representing pictures of objects shall be arranged in a matrix of three (3) rows and two (2) columns. One (1)

play symbol and play symbol caption representing a prize amount shall appear in the "PRIZE" box.

(f) The game below game "3" on each instant ticket shall be labeled "5" and contain three (3) play symbols and play symbol captions, two (2) of which represent numbers. The third play symbol and play symbol caption shall represent a prize amount and appear in the box labeled "PRIZE".

(g) The game below game "4" on each instant ticket shall be labeled "6" and shall contain one (1) play symbol and play *[sic., symbol]* **caption in the "FAST WIN" area.**

(h) The game below game "5" on each instant ticket shall be labeled "7" and shall contain seven (7) play symbols and play symbol captions. One (1) play symbol and play symbol caption representing a number shall appear in the small box labeled "LUCKY NUMBER". Six (6) play symbols and play symbol captions shall appear in the large box labeled "YOUR NUMBERS" and be arranged in pairs of numbers and prize amounts. *(State Lottery Commission; 65 IAC 4-333-3; emergency rule filed Oct 16, 2003, 2:45 p.m.: 27 IR 891)*

65 IAC 4-333-4 Play symbols and play symbol captions
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. (a) The play symbols and play symbol captions representing prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $6.00
SIX
(7) $7.00
SEVEN
(8) $10.00
TEN
(9) $17.00
SEVENTEEN
(10) $20.00
TWENTY
(11) $30.00
THIRTY
(12) $40.00
FORTY
(13) $70.00
SEVENTY
(14) $100
ONE HUN
(15) $200
TWO HUN
(16) $700
SVN HUN
(17) $1,000
ONE THOU
(18) $77,000
SVT SVN THOU

(b) The play symbols and play symbol captions appearing in games "2", "3", "5", and "7", 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
THREE
(4) 4
FOUR
(5) 5
FIVE
(6) 6
SIX
(7) 7
SEVEN
(8) 8
EIGHT
(9) 9
NINE

(c) The play symbols and play symbol captions appearing in game "4", other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) A picture of a stack of dollar bills
MONEY
(2) A picture of a money bag
MNYBG
(3) A picture of a pot of gold
PTGLD
(4) A picture of a gold bar
GOLD
(5) A picture of stacks of coins
COINS
(6) A picture of a circle around a dollar sign
COIN
(7) A picture of a crown
CROWN
(8) A picture of a rabbit's foot
RBTFT
(9) A picture of a horseshoe
SHOE

(10) A picture of a star
STAR
(11) A picture of a diamond
DIMND
(12) A picture of a dollar sign
DLRSN

(d) The play symbols and play symbol captions appearing in the "FAST WIN" area of game "6" shall consist of the following possible play symbols and play symbol captions:
(1) TRY AGAIN
(2) $17.00
SEVENTEEN
(State Lottery Commission; 65 IAC 4-333-4; emergency rule filed Oct 16, 2003, 2:45 p.m.: 27 IR 892)

65 IAC 4-333-5 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. (a) The holder of a ticket in instant game number 707 shall remove the latex material covering the forty (40) play symbols and play symbol captions.

(b) If three (3) matching play symbols and play symbol captions are exposed in game "1", the holder is entitled to the matched prize amount.

(c) If the number in the "YOURS" column is higher than the number in the "THEIRS" column in either row in game "2", the holder is entitled to the prize exposed for that row.

(d) If three (3) play symbols and play symbol captions representing the number seven (7) are exposed in any vertical, horizontal, or diagonal line in the game "3" matrix, the holder is entitled to a prize in the amount set forth in the "PRIZE" box.

(e) If three (3) matching play symbols and play symbol captions are exposed in game "4", the holder is entitled to a prize in the amount set forth in the "PRIZE" box.

(f) If two (2) play symbols and play symbol captions representing the number seven (7) are exposed in game "5", the holder is entitled to a prize in the amount set forth in the "PRIZE" box.

(g) If the play symbol and play symbol caption associated with seventeen dollars is exposed in the "FAST WIN" area of game "6," the holder is entitled to a prize of seventeen dollars ($17).

(h) If, in game "7", one (1) or more of the play symbols and play symbol captions in the "YOUR NUMBERS" box match the play symbol and play symbol caption in the "LUCKY NUMBER" box, the holder is automatically entitled to the paired prize amount(s). *(State Lottery Commission; 65 IAC 4-333-5; emergency rule filed Oct 16, 2003, 2:45 p.m.: 27 IR 893)*

65 IAC 4-333-6 Prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. The number of winning plays, prize amounts, and approximate number of winners in instant game number 707 are as follows:

Number of Winning Plays and Prize Amount Play Symbols	Prize Amount	Approximate Number of Winners
1 – $2.00 + 1 – $5.00	$7	62,400
1 – $1.00 + 3 – $2.00	$7	62,400
1 – $7.00	$7	31,200
2 – $5.00	$10	62,400
1 – $10.00	$10	62,400
7 – $2.00	$14	31,200
2 – $7.00	$14	15,600
1 – $4.00 + 1 – $10.00	$14	15,600
1 – $17.00 ("FAST WIN")	$17	31,200
1 – $7.00 + 1 – $10.00	$17	15,600
1 – $17.00	$17	15,600
8 – $5.00	$40	2,600
4 – $10.00	$40	2,600
1 – $40.00	$40	2,600
1 – $5.00 + 8 – $6.00 + 1 – $17.00 ("FAST WIN")	$70	8,996
7 – $10.00	$70	8,840
1 – $70.00	$70	8,840
5 – $20.00 + $17.00 ("FAST WIN")	$117	650
1 – $7.00 + 2 – $10.00 + 3 – $30.00	$117	650
1 – $3.00 + 1 – $17.00 ("FAST WIN") + 4 – $20.00 + 2 – $100 + 2 – $200	$700	455
7 – $100	$700	455
1 – $700	$700	455
1 – $1,000	$1,000	10
7 – $1,000	$7,000	4
1 – $77,000	$77,000	2

(State Lottery Commission; 65 IAC 4-333-6; emergency rule filed Oct 16, 2003, 2:45 p.m.: 27 IR 893)

65 IAC 4-333-7 Number of ticket; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. (a) There shall be approximately one million five hundred (1,500,000) *[sic.]* **instant tickets initially available in instant game number 707.**

(b) The odds of winning a prize in instant game number 707 are approximately 1 in 3.52.

(c) All reorders of tickets for instant game number 707 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order. *(State Lottery Commission; 65 IAC 4-333-7; emergency rule filed Oct 16, 2003, 2:45 p.m.: 27 IR 893)*

65 IAC 4-333-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. Players will have up to sixty (60) days from the end of instant game 707 within which to claim their prizes. End of game and last day to claim dates are available from any retailer who sells lottery tickets, through the commission's customer service number, 1-800-955-6886, and on its Web site, www.hoosierlottery.com. Any prizes not claimed by that date are forfeited. *(State Lottery Commission; 65 IAC 4-333-8; emergency rule filed Oct 16, 2003, 2:45 p.m.: 27 IR 894)*

LSA Document #03-292(E)
Filed with Secretary of State: October 16, 2003, 2:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-295(E)

DIGEST

Temporarily adds rules concerning instant game number 671. Effective October 29, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 671, Holiday Spectacular".**

SECTION 2. **Instant tickets in instant game number 671 shall sell for twenty dollars ($20) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 671 shall contain sixty-one (61) play symbols and play symbol captions arranged among five (5) separate and independent games each concealed under a spot of latex material. The games shall be labeled "GAME 1", "GAME 2", "GAME 3", "GAME 4", and "GAME 5", respectively. The games shall be arranged as follows:**
(1) "GAME 1" shall contain nine (9) play symbols and play symbol captions representing pictures and arranged in a matrix of three (3) rows and three (3) columns. One (1) play symbol and play symbol caption representing a prize amount shall appear in the area labeled "PRIZE".
(2) "GAME 2" shall contain four (4) play symbols and play symbol captions representing prize amount arranged in a matrix of two (2) rows and two (2) columns. The matrix shall be labeled "YOUR AMOUNTS". One (1) play symbol and play symbol caption representing a prize amount shall be located in the area labeled "LUCKY AMOUNT".
(3) "GAME 3" shall contain two (2) play symbols and play symbol captions representing pictures.
(4) "GAME 4" shall contain a legend surrounded by eighteen (18) play symbols and play symbol captions arranged in a matrix of six (6) rows labeled "PLAY 1", "PLAY 2", "PLAY 3", "PLAY 4", "PLAY 5", and "PLAY 6".
(5) "GAME 5" shall contain twenty-four (24) play symbols and play symbol captions appearing in the area labeled "YOUR NUMBERS" arranged in pairs representing numbers and prize amounts. Two (2) play symbols and play symbol captions representing numbers shall appear in the area labeled "WINNING NUMBERS".

(b) The play symbols and play symbol captions in "GAME 1", other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:
(1) X
XXX
(2) A picture of a snowflake
SNO

(c) The play symbols and play symbol captions in "GAME 3" and "GAME 4", other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:
(1) A picture of a tree
TREE
(2) A picture of a gift box
GIFT
(3) A picture of a wreath
WRTH
(4) A picture of a star
STAR
(5) A picture of a stocking
STKG
(6) A picture of a candy cane
CNDY
(7) A picture of a bell
BELL
(8) A picture of a candle
CNDL
(9) A picture of a horn
HORN

(d) The play symbols and play symbol captions in "GAME 5", 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
THREE
(4) 4
FOUR
(5) 5
FIVE
(6) 6
SIX
(7) 7
SEVEN
(8) 8
EIGHT
(9) 9
NINE
(10) 11
ELEVN
(11) 12
TWLV
(12) 13
THRTN
(13) 14
FORTN
(14) 15
FIFTN
(15) 16
SIXTN
(16) 17
SNTN
(17) 18
EGTN
(18) 19
NINTN
(19) 20
TWTY
(20) 10X
WIN – 10X

(e) The play symbols and play symbol captions representing prize amounts and appearing in "GAME 1", "GAME 2", "GAME 3", "GAME 4", and "GAME 5" shall consist of the following possible play symbols and play symbol captions:

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

SECTION 4. **(a) The holder of a ticket in instant game number 671 shall remove the latex material covering the sixty-one (61) play symbols and play symbol captions. Winning plays exposed are as follows:**

(1) In "GAME 1", if three (3) play symbols of a picture of a "snowflake" are exposed in a row, column, or diagonal, the holder is entitled to the prize in the "PRIZE" area.

(2) In "GAME 2", if any of "YOUR AMOUNTS" match the "LUCKY AMOUNT", the holder is entitled to the matched prize amount.

(3) In "GAME 3", if two (2) matching play symbols and play symbol captions are exposed, the holder is automatically entitled to fifty dollars ($50).

(4) In "GAME 4", if at least three (3) matching play symbols and play symbol captions representing pictures of objects are exposed in "PLAY 1", "PLAY 2", "PLAY 3", "PLAY 4", "PLAY 5", and "PLAY 6", the holder is entitled to the corresponding prize(s) on the legend. and

(5) In "GAME 5", if any of the play symbols or play symbol captions in the "YOUR NUMBERS" area match either of the play symbols and play symbol captions in the "WINNING NUMBERS" area, the holder is entitled to the paired prize amount. If the play symbol "10X" is exposed in the "YOUR NUMBERS" area, the holder is entitled to ten (10) times the amount exposed.

(b) The prize amounts and number of winners in instant game number 671 are as follows:

Number of Winning Play Symbols	Prize Amount	Approximate Number of Winners
1 – $20.00	$20	93,600
1 – $2.00 with 10X	$20	93,600
1 – $25.00	$25	93,600
5 – $10.00	$50	49,400
2 – $25.00	$50	49,400
1 – $5.00 with 10X	$50	49,400
1 – $50.00	$50	49,400
1 – $10.00 with 10X	$100	15,925

4 – $25.00	**$100**	**15,925**
1 – $100.00	**$100**	**15,925**
8 – $10.00 + 1 – $20.00 + 14 – $25.00 + 1 – $50.00	**$500**	**715**
5 – $100.00	**$500**	**715**
1 – $500.00	**$500**	**715**
1 – $1,000	**$1,000**	**65**
1 – $10,000	**$10,000**	**26**
1 – $100,000	**$100,000**	**2**
1 – $250,000	**$250,000**	**3**

SECTION 5. **(a) There shall be approximately one million five hundred thousand (1,500,000) instant tickets initially available in instant game number 671.**

(b) The odds of winning a prize in instant game number 671 are approximately 1 in 2.95.

(c) All reorders of tickets for instant game number 671 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 671 is October 31, 2004.**

SECTION 7. **This document expires November 30, 2004.**

LSA Document #03-295(E)
Filed with Secretary of State: October 29, 2003, 2:30 p.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #03-293(E)

DIGEST

Amends 71 IAC 12-2-15 concerning allocation of riverboat gambling admissions tax revenue. Effective October 20, 2003.

71 IAC 12-2-15

SECTION 1. 71 IAC 12-2-15, AS AMENDED AT 26 IR 2387, SECTION 22, 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 forty-nine percent (49%) to standardbred purses, forty-nine percent (49%) to thoroughbred purses, and two percent (2%) to quarter horse purses. If more than one (1) track races a *[sic.]* 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.~~ **and thoroughbred/quarter horse as defined by 71 IAC 1-1-41.5 and 71 IAC 1.5-1-37.5.**

~~(c) Subdivision (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; emergency rule filed Oct 20, 2003, 9:35 a.m.: 27 IR 896)*

LSA Document #03-293(E)
Filed with Secretary of State: October 20, 2003, 9:35 a.m.

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #03-299(E)

DIGEST

Temporarily amends provisions at 327 IAC 5-4-3 and adds provisions at 327 IAC 15-15. Authority: IC 4-22-2-37.1(a)(14). *NOTE: The original emergency document, LSA Document #03-127(E), as printed at 26 IR 3066, effective May 14, 2003, expires August 12, 2003. The first extension, LSA Document #03-223(E), as printed at 26 IR 3892, effective August 11, 2003, expires November 9, 2003.* Effective November 10, 2003. Expires February 7, 2004.

SECTION 1. (327 IAC 5-4-3) (a) Concentrated animal feeding operations are point sources ~~subject to the~~ **that require** NPDES ~~permit program~~ **permits for discharges or potential discharges. Once an operation is defined as a CAFO SECTION, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.**

(b) **The following** definitions **apply throughout this rule:**

(1) "Animal confinement area" means the areas of the facility where animals are housed. It includes, but is not limited to, the following areas:

(A) Open lots.
(B) Housed lots.
(C) Feedlots.
(D) Confinement houses.
(E) Stall barns.
(F) Free stall barns.
(G) Milk rooms.
(H) Milking center.
(I) Cowyards.
(J) Barnyards.
(K) Medication pens.
(L) Walkers.
(M) Animal walkways.
(N) Stables.

~~(1)~~ **(2)** "Animal feeding operation" **or "AFO"** means **the following:**

(A) A lot or facility where the following conditions are met:

~~(A)~~ **(i)** Animals, other than aquatic animals, **that** have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any **twelve** (12) month period. ~~and~~

~~(B)~~ **(ii)** Crops, vegetation, forage growth, or post-harvest residues **that** are not sustained in the normal growing season over any portion of the lot or facility.

(B) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of this article, ~~(327 IAC 5),~~ to be a single animal feeding operation if ~~they~~ **the operations** adjoin each other or if ~~they~~ **the operations** use a common area or system for the disposal of wastes.

~~(2)~~ **(3)** "Concentrated animal feeding operation" **or "CAFO"** means an ~~animal feeding operation which meets the criteria set forth in clause (A) or (B) or which is designated~~ **AFO that is one (1) of the following:**

(A) A large CAFO.
(B) A medium CAFO.
(C) Designated as a CAFO by the commissioner under subsection (c).

~~(A) More than the numbers of animals specified in any of the following categories are confined:~~

~~(i) one thousand (1,000) slaughter and feeder cattle;~~
~~(ii) seven hundred (700) mature dairy cattle (whether milked or dry cows);~~
~~(iii) two thousand five hundred (2,500) swine each weighing over 25 kilograms (approximately 55 pounds);~~
~~(iv) five hundred (500) horses;~~
~~(v) ten thousand (10,000) sheep or lambs;~~
~~(vi) fifty-five thousand (55,000) turkeys;~~

(vii) one hundred thousand (100,000) laying hens or broilers (if the facility has continuous overflow watering);
(viii) thirty thousand (30,000) laying hens or broilers (if the facility has a liquid manure system);
(ix) five thousand (5,000) ducks; or
(x) one thousand (1,000) animal units; or

(B)(i) Either pollutants are discharged from the facility into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly from the facility into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event; and

(ii) More than the following numbers of animals are confined in any of the following categories:

(AA) three hundred (300) slaughter or feeder cattle;
(BB) two hundred (200) mature dairy cattle (whether milked or dry cows);
(CC) seven hundred fifty (750) swine, each weighing over 25 kilograms;
(DD) one hundred fifty (150) horses;
(EE) three thousand (3,000) sheep or lamb;
(FF) sixteen thousand five hundred (16,500) turkeys;
(GG) thirty thousand (30,000) laying hens or broilers (if the facility has continuous overflow watering);
(HH) nine thousand (9,000) laying hens or broilers (if the facility has a liquid manure handling system);
(II) one thousand five hundred (1,500) ducks; or
(JJ) three hundred (300) animal units.

(3) "Animal unit" means a unit of measurement for any animal feeding operation such that the total animal units is calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) "Manmade" means constructed by man and used for the purpose of transporting wastes.

Two (2) or more AFOs under common ownership that are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for disposal of wastes.

(4) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.

(5) "Land application area" means land under the control of an AFO owner or operator, whether the land is owned, rented, leased, or subject to an access agreement, to which manure, litter, or process wastewater from the production area is or may be applied.

(6) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines as many as or more than the number specified in any of the following categories:

(A) Seven hundred (700) mature dairy cows, whether milked or dry.
(B) One thousand (1,000) veal calves.
(C) One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.
(D) Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more.
(E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.
(F) Five hundred (500) horses.
(G) Ten thousand (10,000) sheep or lambs.
(H) Fifty-five thousand (55,000) turkeys.
(I) Thirty thousand (30,000) hens or broilers if the AFO uses a liquid manure handling system.
(J) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
(K) Eighty-two thousand (82,000) laying hens if the AFO uses other than a liquid manure handling system.
(L) Thirty thousand (30,000) ducks if the AFO uses other than a liquid manure handling system for ducks.
(M) Five thousand (5,000) ducks if the AFO uses a liquid manure handling system for ducks.

(7) "Liquid manure handling system for ducks" means any waste collection or storage system that involves the use of ponds for animal confinement and that collects waste generated by ducks or contaminated storm water from the production area.

(8) "Manure" means animal waste, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(9) "Manure storage area" means any area where manure is kept. It includes, but is not limited to, the following areas:

(A) Lagoons.
(B) Run-off ponds.
(C) Storage sheds.
(D) Stockpiles.
(E) Under house or pit storages.
(F) Liquid impoundments.
(G) Static piles.
(H) Composting piles.

(10) "Medium concentrated animal feeding operation" or "medium CAFO" means:

(A) Any AFO that stables or confines the type and number of animals that fall within any of the following ranges and has been defined or designated as a CAFO:
(i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cattle, whether milked or dry.
(ii) Three hundred (300) to nine hundred ninety-nine

(999) veal calves.

(iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.

(iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing fifty-five (55) pounds or more.

(v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.

(vi) One hundred fifty (150) to four hundred ninety-nine (499) horses.

(vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.

(viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.

(ix) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system.

(x) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.

(xi) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens if the AFO uses other than a liquid manure handling system.

(xii) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks if the AFO uses other than a liquid manure handling system for ducks.

(xiii) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks if the AFO uses a liquid manure handling system for ducks. and

(B) One (1) of these conditions are met:

(i) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(11) "No potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.

(12) "Process wastewater" means the following:

(A) Water directly or indirectly used in the operation of the AFO for any or all of the following:

(i) Spillage or overflow from animal or poultry watering systems.

(ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.

(iii) Direct contact swimming, washing, or spray cooling of animals.

(iv) Dust control.

(B) Process wastewater includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.

(13) "Production area" means that part of an AFO that includes the following:

(A) The animal confinement areas.

(B) The manure storage areas.

(C) The raw materials storage areas.

(D) The waste containment areas.

(E) Egg washing or processing facility.

(F) Any area used in the storage, handling, treatment, or disposal of mortalities.

(14) "Raw materials storage area" includes, but is not limited to, the following:

(A) Feed silos.

(B) Silage bunkers.

(C) Bedding materials.

(15) "Small concentrated animal feeding operation" or "small CAFO" means an AFO that is designated as a CAFO and is not a medium CAFO.

(16) "Waste containment area" means an area designed to contain manure, litter, or process wastewater and includes, but is not limited to, the following:

(A) Settling basins.

(B) Areas within berms and diversions that separate uncontaminated storm water.

(c) Case-by-case designation of concentrated animal feeding operations **requirements are as follows:**

(1) Notwithstanding any other provision of this SECTION, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of ~~pollution~~ **pollutants** to the waters of the state. In making this designation, the commissioner shall consider the following factors:

(A) The size of the animal feeding operation and the amount of wastes reaching waters of the state.

(B) The location of the animal feeding operation relative to waters of the state.

(C) The means of conveyance of ~~animal wastes~~ **manure** and process wastewaters into waters of the state.

(D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, **manure,** and process wastewaters into waters of the state. ~~and~~

(E) Other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall a permit application be required from a concentrated animal feeding operation designated under this subsection until there has been an on-site inspection of the operation and a determination that the operation should be regulated under the permit program.

(3) No animal feeding operation with less than the numbers of animals set forth in subsection ~~(b)~~ **(b)(6)** shall be designated as a concentrated animal feeding operation unless:

(A) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(B) pollutants are discharged directly into waters of the state ~~which~~ **that** originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) An owner or operator of a large CAFO does not need to seek permit coverage under this rule if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with SECTION 13 of this rule *[document]***.**

SECTION 2. (327 IAC 15-15-1) **The purpose of this rule is to establish an NPDES general permit for CAFOs. In addition to the requirements of this article for all general permits, this rule establishes the requirements for CAFOs in Indiana.**

SECTION 3. (327 IAC 15-15-2) **The definitions contained in IC 13-11-2, 327 IAC 5-1.5, SECTION 1 of this rule** *[document]***, and 327 IAC 15-1-2 apply throughout this rule. In addition to those definitions, the following definitions apply throughout this rule:**

(1) "Manure management plan" or "MMP" means the plan required under 327 IAC 16 for the proper handling, storage, and disposal of manure, litter, and process wastewater.

(2) "NRCS 590 standard" means the Indiana Natural Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, July 2001.

SECTION 4. (327 IAC 15-15-3) **(a) This rule applies to all CAFOs or AFOs designated as CAFOs, under SECTION 1(c) of this rule** *[document]***, located within the permit boundary set forth in SECTION 4 of this rule** *[document]***. All CAFO owners or operators must seek coverage under this rule or through an individual NPDES permit except as provided in subsection (d).**

(b) Any owner or operator covered by this rule can request to be excluded from coverage under this general permit rule by applying for and obtaining an individual NPDES permit.

(c) A person excluded from the general permit rule solely because the person has a valid existing individual NPDES permit may request coverage under the general permit rule and may request revocation of the existing individual NPDES permit pursuant to 327 IAC 15-2-3.

(d) The discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of land application of the manure, litter, or process wastewater to land areas under its control is a discharge from the CAFO subject to NPDES permit requirements except in the event of an agricultural storm water discharge. A precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge provided the manure, litter, or wastewater has been applied in accordance with site-specific nutrient management practices and the requirements of this rule.

SECTION 5. (327 IAC 15-15-4) **(a) An owner or operator proposing:**

(1) construction of a CAFO;

(2) construction at a CFO that results in an increase in the number of animals such that it becomes a CAFO; or

(3) construction of a confinement building or waste management system at a CAFO;

must apply for a CFO approval from the commissioner in accordance with the following:

(A) 327 IAC 16-3-1(d) through (e).

(B) 327 IAC 16-5.

(C) 327 IAC 16-7-1.

(D) 327 IAC 16-7-2.

(E) 327 IAC 16-7-5 through 327 IAC 16-7-13.

(F) 327 IAC 16-8.

(b) If the proposed construction for the CAFO meets the requirements of this SECTION, as applicable, the commissioner will issue an approval. An application for a CFO approval constitutes a NOI for purposes of this rule. The approval can only be denied for noncompliance with applicable provisions in this SECTION and this rule.

(c) Any person proposing a new CAFO facility within the permit boundary shall submit a NOI at least one hundred eighty (180) days before the date the facility is populated with animals and must comply with all requirements of this rule upon submittal of the NOI.

SECTION 6. (327 IAC 15-15-5) **All CAFOs, or AFOs designated as CAFOs under SECTION 1(c) of this rule** *[document]* **or 40 CFR 122.23(c), within the boundaries of the state are regulated by this rule.**

SECTION 7. (327 IAC 15-15-6) **(a) Qualifying for this general permit rule constitutes an approval under IC 13-18-10.**

(b) A CAFO that has a general permit is not required to obtain or renew the CFO approval under 327 IAC 16-7-3 and 327 IAC 16-7-4 in order to operate.

SECTION 8. (327 IAC 15-15-7) **(a) The owner or operator of a CAFO shall submit a notice of intent (NOI) to be covered by this rule, on a form supplied by the commissioner, to the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015, Attention: Permits Section.**

(b) The NOI shall include the following:
(1) Name, telephone number, and mailing address of the owner and operator.
(2) Facility name and location address. Contact person and telephone number.
(3) Type and number of animals at the facility.
(4) Type of containment and storage and total capacity for manure, litter, and process wastewater storage.
(5) Total number of acres under control of the applicant available for land application.
(6) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).
(7) List of other environmental permits held and permit numbers including the CFO farm ID number provided on state CFO approval under 327 IAC 16.
(8) A topographic map of the facility.
(9) Payment of application fee of fifty dollars ($50).
(10) SIC code for the facility.

(c) The NOI must be signed by:
(1) the owner or operator of the facility for which the NOI is submitted; or
(2) a person described under 327 IAC 15-4-3(g).

(d) Following submittal of the NOI to IDEM, IDEM shall do the following:
(1) Review the NOI for completeness and applicability under this rule.
(2) Consider comments received on whether a facility meets the eligibility requirements for a general permit.
(3) Determine if the facility is eligible for a general permit under this rule or will be required to obtain an individual NPDES permit under 327 IAC 5.
(4) Request additional information, if needed.
(5) Notify the facility, within ninety (90) days of receipt of the NOI, that the applicant:
(A) qualifies for the general permit under this rule;
(B) does not qualify for the general permit under this rule; or
(C) must submit an individual NPDES permit application.

(e) In accordance with 40 CFR 122.28(b), any interested person may petition the commissioner to require a person subject to this rule to apply for and obtain an individual NPDES permit.

(f) Compliance with the NOI submission requirements under this rule may not be transferred. If ownership of a facility is transferred to a new person, that person must submit a NOI under this SECTION or apply for an individual NPDES permit under 327 IAC 5. The new owner must submit the NOI at least thirty (30) days prior to beginning operation at the transferred facility.

(g) A determination under this SECTION is appealable under IC 4-21.5.

SECTION 9. (327 IAC 15-15-8) **(a) The following are required to submit a NOI on or before April 13, 2006:**
(1) CAFOs with one thousand (1,000) or more cow/calf pairs.
(2) CAFOs with one thousand (1,000) or more veal calves.
(3) CAFOs with ten thousand (10,000) or more swine weighing less than fifty-five (55) pounds.
(4) CAFOs with one hundred twenty-five thousand (125,000) or more chickens other than laying hens and if the operation uses other than a liquid manure handling system.
(5) CAFOs with eighty-two thousand (82,000) or more laying hens if the operation uses other than a liquid manure handling system.
(6) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOS prior to that date because the operation discharged, is discharging, or will discharge only in the event of a twenty-five (25) year, twenty-four (24) hour storm.
These CAFOs must maintain a CFO approval under 327 IAC 16 until the NOI is submitted to comply with this rule.

(b) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date because the operation has not discharged, does not discharge, and will not discharge except in the event of a twenty-five (25) year, twenty-four (24) hour storm must certify to the commissioner in writing within ninety (90) days of the effective date of this rule that the AFO was not required to apply for a permit under 327 IAC 5 and that a discharge has not occurred from the operation and the operation was constructed and is at all times being maintained to preclude discharge during dry weather and wet weather up to and including the twenty-five (25) year, twenty-four (24) hour storm. The certification shall be signed in accordance with 327 IAC 15-4-3(g). Any operation that has a discharge after certifying to the commissioner under this subsection shall submit a NOI within thirty (30) days after the discharge.

(c) The owner or operator of any existing CAFO, except those listed in subsection (a) or timely certifying under subsection (b), shall submit a NOI within ninety (90) days of the effective date of this rule.

(d) Operations designated as a CAFO in accordance with SECTION 1(c) of this rule *[document]* **or 40 CFR 122.23(c) must submit a NOI no later than ninety (90) days after receiving the notice of designation.**

SECTION 10. (327 IAC 15-15-9) **(a) In addition to the conditions set forth in this rule, the conditions for a NPDES general permit under the following apply:**

(1) 327 IAC 15-1-1 Purpose.
(2) 327 IAC 15-1-2 Definitions.
(3) 327 IAC 15-1-3 Department request for data.
(4) 327 IAC 15-1-4 Enforcement.
(5) 327 IAC 15-2-1 Purpose and scope.
(6) 327 IAC 15-2-3 NPDES general permit rule applicability requirements.
(7) 327 IAC 15-2-4 Administrative requirement for NPDES general permits.
(8) 327 IAC 15-2-5 Notice of intent letter.
(9) 327 IAC 15-2-6 Exclusions.
(10) 327 IAC 15-2-7 Effect of general permit rule.
(11) 327 IAC 15-2-8 Nontransferability of notification requirements; time limits for individual NPDES permit applications.
(12) 327 IAC 15-2-9 Special requirements for NPDES general permit rule.
(13) 327 IAC 15-2-10 Prohibitions.
(14) 327 IAC 15-4-1, excluding subsections (h) and (m), General conditions.
(15) 327 IAC 15-4-3 Reporting requirements.

(b) The permittee must comply with 327 IAC 16-9 through 327 IAC 16-12 and must maintain the manure management plan (MMP) required under 327 IAC 16-7-11.

(c) This permit does not constitute a new or amended permit under 327 IAC 16-10-3(f)(2).

(d) Animals may not have direct access to waters of the state.

(e) Disposal of dead animals must be handled under rules of the board of animal health at 345 IAC 7-7-3.

SECTION 11. (327 IAC 15-15-10) **The following are specific permit conditions that apply to all CAFO NPDES general permits. Permit holders must:**

(1) Obtain approval under 327 IAC 16-7-1(b) for any change in design or construction under 327 IAC 16-8 and 327 IAC 16-9-1.
(2) Comply with NRCS 590 Standard* by December 31, 2006, unless the commissioner has approved an alternative method to minimize the potential for nutrients to be transported or to migrate. This approval is based on satisfying the intent of the NRCS 590 Standard*.
(3) Submit an annual report to the commissioner by February fifteenth of each year for the previous calender *[sic.]* **year with the following information:**
(A) Number and type of animals, whether in open confinement or housed under roof.
(B) Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous twelve (12) months.
(C) Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous twelve (12) months.
(D) Total number of acres for land application covered by MMP required by this rule.
(E) Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous twelve (12) months.
(F) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including the date, time, and approximate volume for each discharge.
(4) Develop soil conservation practice plan for land application areas within one (1) year after the effective date of this rule and implement the plan within three (3) years after the effective date of this rule. Developing and implementing a CNMP within the time frame specified in this subdivision satisfies this requirement. Any land:
(A) not owned or controlled by the CAFO to which manure is applied; and
(B) where the land owner does not implement conservation practices;
must be used in accordance with 327 IAC 16-10-3 through 327 IAC 16-10-5.
(5) Conduct manure testing for nitrogen and phosphorus annually.
(6) Land application of liquid manure on snow-covered or frozen ground is prohibited unless done in accordance with a plan approved by the commissioner. The plan must demonstrate to the commissioner that land application under such conditions will not lead to run-off and discharge to waters of the state. The plan may include information about slope, barriers between the land application area and waters of the state, method of application, other conservation practices to be used, or any other information that would demonstrate that the potential to discharge pollutants to waters of the state is minimized. Permittees may not land apply under such conditions until receiving approval of the plan by the commissioner.

***This document is incorporated by reference. Copies may be**

obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204 or on-line at http://www.nrcs.usda.gov/technical/ECS/nutrient/590.html.

SECTION 12. (327 IAC 15-15-11) **(a) The permittee shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter upon the premises where a regulated facility or activity is located, have access to and copy any records that must be kept under the conditions of this rule, in accordance with 327 IAC 15-4-1(l).**

(b) The conditions of this rule are subject to enforcement pursuant to 327 IAC 15-4-1 and IC 13-30.

SECTION 13. (327 IAC 15-15-12) **(a) The commissioner, upon request, may make a case-specific determination that a large CAFO has no potential to discharge pollutants to waters of the state. When making such a determination, the commissioner shall consider the following:**

(1) The potential for discharges from the production area.

(2) The potential for discharges from any land application area.

(3) Any record of prior discharges by the CAFO.

(b) The commissioner shall not determine the CAFO to have no potential to discharge pollutants if the CAFO has had a discharge within the five (5) years prior to the date of the request under this SECTION.

(c) To request a determination of no potential to discharge, the owner or operator shall submit any information that would support such a determination, including all NOI information required under SECTION 8 of this rule *[document]***. The commissioner may require additional information to supplement the request and may gather information through an on-site inspection of the CAFO. The information is to be submitted to the commissioner by the date required for submission of a NOI or permit application.**

(d) Before making a final decision to grant a no potential to discharge determination, the commissioner shall issue a public notice of receipt of the request. The notice must be accompanied by a fact sheet, which shall include the following:

(1) A brief description of the type of facility or activity requesting the determination.

(2) A brief summary of the factual basis, upon which the request was based, for granting the determination.

(3) A description of the procedures for reaching a final decision on the determination.

(e) The commissioner must notify a CAFO of the final determination within ninety (90) days of receiving the request. If the commissioner denies the no potential for discharge determination, the owner or operator must seek coverage under a permit within thirty (30) days of the denial.

(f) Any unpermitted CAFO that discharges pollutants into waters of the state is in violation of the Clean Water Act even if it has received a no potential to discharge determination from the commissioner.

(g) Any CAFO that has received a determination under this SECTION but that anticipates changes in circumstances that could create the potential for a discharge shall contact the commissioner and apply for and obtain permit authorization prior to the change of circumstances.

(h) The commissioner retains the authority to require NPDES permit coverage for a CAFO that has received a determination under this SECTION if circumstances at the facility change, new information becomes available, or there is reason to believe that the CAFO has a potential to discharge.

SECTION 14. (327 IAC 15-15-13) **(a) Coverage under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences.**

(b) Coverage commences on the date that the applicant receives a letter of approval from the commissioner. The commissioner shall notify the applicant within ninety (90) days of receipt of the NOI as required in SECTION 8 of this rule *[document]***. If the applicant does not receive notification from the commissioner within the time frames specified in this SECTION, coverage shall commence ninety (90) days from the date the commissioner receives the NOI.**

(c) To obtain renewal of coverage under this general permit rule, the information required under SECTION 8 of this rule *[document]* **shall be submitted to the commissioner no later than forty-five (45) days prior to the expiration of coverage under this rule unless the commissioner determines that a later date is acceptable.**

(d) If a CAFO is required to submit an application for an individual NPDES permit, the general permit terminates when:

(1) the owner or operator fails to submit the permit application; or

(2) the individual permit is issued or denied by the commissioner.

SECTION 15. (327 IAC 15-15-14) **(a) CAFOs subject to this rule are required to meet the effluent limitations contained in 40 CFR 412*.**

(b) Compliance with general and specific permit condi-

tions as required by SECTIONS 10 and 11 of this rule *[document]* **constitutes compliance with a nutrient management plan and implementation of best management practices as detailed in 40 CFR 412.4.**

(c) Any discharges under this rule are required to meet water quality standards under 327 IAC 5.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

SECTION 16. **SECTIONS 1 through 15 of this document expire February 7, 2004.**

LSA Document #03-299(E)
Filed with Secretary of State: November 10, 2003, 9:45 a.m.

Change in Notice of Public Hearing

TITLE 326 AIR POLLUTION CONTROL BOARD

#03-67(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of LSA Document #03-67, printed at 26 IR 3962, 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 ***January 7, 2004*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 2.*

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

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027, press 0, and ask for ext. 3-6868 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change 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, Indianapolis, Indiana and are open for public inspection.

Janet McCabe
Assistant Commissioner
Office of Air Quality

TITLE 868 STATE PSYCHOLOGY BOARD

LSA Document #03-60

The State Psychology Board gives notice that the date of the public hearing for LSA Document #03-60, printed at 26 IR 3741, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on ***January 23, 2004*** *at* ***9:30 a.m.****, in the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the State Psychology Board will hold a public hearing on proposed new rules establishing a list of restricted psychology tests. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Lisa R. Hayes
Executive Director
Health Professions Bureau

Notice of Intent to Adopt a Rule

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

LSA Document #03-305

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

OVERVIEW: Adds 170 IAC 4-4.2 concerning net metering. The purpose of this rulemaking is for investor-owned electric utilities to provide a net metering program to their residential customers and schools. Effective 30 days after filing with the secretary of state. Questions concerning the proposed rule may be addressed to the following telephone number: (317) 232-0158. Statutory authority: IC 8-1-1-3(g).

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-296

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

OVERVIEW: Amends 312 IAC to update cross-references to other laws, to incorporate emergency rules already in effect as permanent rules, and to include definitions that clarify the current administration of programs. Questions or comments may be directed to slucas@dnr.state.in.us or by telephone at 317-233-3322. Statutory authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23; IC 14-28-1-5; IC 14-31-3-14.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-302

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 1-14.6 to add provisions to assess a quality assessment fee on nursing facility providers for the purpose of funding enhanced nursing facility reimbursement. Adds provisions for additional reimbursement for closing or converting nursing facilities. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #03-297

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

OVERVIEW: Amends 410 IAC 16.2-3.1-2 and 410 IAC 16.2-5-1.1 to require an independent verification of financial status by a certified public accountant and to clarify applicability of the rule. Also amends the fine in 410 IAC 16.2-5-1.1. Written comments may be submitted to the Indiana State Department of Health, Health Care Regulatory Services Commission, 2 North Meridian Street #5A, Indianapolis, Indiana 46204. Statutory authority: IC 16-28-1-7; IC 16-28-1-12.

TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD

LSA Document #03-298

Under IC 4-22-2-23, the Indiana School for the Deaf Board intends to adopt a rule concerning the following:

OVERVIEW: As provided in IC 20-16-3-10, the Indiana School for the Deaf Board intends to adopt rules to establish criteria for admission of children with hearing disabilities, including children with multiple disabilities, at the Indiana School for the Deaf. The Indiana School for the Deaf Board invites written suggestions, facts, arguments, or views in these matters. Questions or comments may be directed to George M. Stailey, Superintendent, Indiana School for the Deaf, at 924-8400. Statutory authority: IC 20-16-3-10.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #03-303

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

OVERVIEW: To amend 760 IAC 2-1 through 760 IAC 2-20 to implement updates to the National Association of Insurance Commissioner model long term care regulation, to conform with the Health Insurance Portability and Accountability Act of 1996, to conform with IC 27-1-15.6 and IC 27-1-15.7, and to

achieve reciprocity with other states on the licensing of insurance producers. Written comments may be submitted to the Indiana Department of Insurance, Attn: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204 or e-mail to astrati@doi.state.in.us. Statutory authority: IC 27-1-15.7-7; IC 27-8-12-7; IC 27-8-12-7.1.

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

LSA Document #03-301

Under IC 4-22-2-23, the State Board of Registration for Professional Engineers intends to adopt a rule concerning the following:

OVERVIEW: Implements rule changes to facilitate the outsourcing of the administration of examinations for professional engineers and engineering interns, including amending 864 IAC 1.1-12-1 to revise the fee schedule for the examination or reexamination. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Board Director, 302 West Washington Street, Room E034, Indianapolis, Indiana 46204-2700 or by electronic mail at pla10@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-31-1-7.

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #03-300

Under IC 4-22-2-23, the State Board of Registration for Land Surveyors intends to adopt a rule concerning the following:

OVERVIEW: Implements rule changes to facilitate the outsourcing of the administration of examinations for land surveyors-in-training and land surveyors, including 865 IAC 1-11-1 to revise the fee schedule for the examination or reexamination. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Board Director, 302 West Washington Street, Room E034, Indianapolis, Indiana 46204-2700 or by electronic mail at pla10@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-21.5-2-14.

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Proposed Rule
LSA Document #03-6

DIGEST

Adds 50 IAC 20 to provide uniform procedures necessary to prescribe both a mileage and per diem allowance for attendance of an initial training sessions and continuing education sessions under IC 6-1.1-35.2. Effective 30 days after filing with the secretary of state.

50 IAC 20

SECTION 1. 50 IAC 20 IS ADDED TO READ AS FOLLOWS:

ARTICLE 20. REMUNERATION FOR INITIAL TRAINING AND CONTINUING EDUCATION SESSIONS

Rule 1. Purpose

50 IAC 20-1-1 Scope
Authority: IC 6-1.1-35.2-2
Affected: IC 6-1.1-35.2

Sec. 1. The purpose of this article is to establish procedures for reimbursement of assessing officials as defined under IC 6-1.1-35.2 or attending an initial training session or a continuing education session. *(Department of Local Government Finance; 50 IAC 20-1-1)*

Rule 2. Definitions

50 IAC 20-2-1 Applicability
Authority: IC 6-1.1-35.2-2
Affected: IC 6-1.1-1-1.5; IC 6-1.1-1-22; IC 6-1.1-35

Sec. 1. Unless otherwise indicated, the definitions contained in IC 6-1.1-1 also apply to this article. The definitions in this rule apply throughout this article. *(Department of Local Government Finance; 50 IAC 20-2-1)*

50 IAC 20-2-2 "Lodging per diem" defined
Authority: IC 6-1.1-35.2-2
Affected: IC 6-1.1-1-1.5; IC 6-1.1-1-22; IC 6-1.1-35

Sec. 2. "Lodging per diem" means the expense incurred for overnight lodging. *(Department of Local Government Finance; 50 IAC 20-2-2)*

50 IAC 20-2-3 "Meal per diem" defined
Authority: IC 6-1.1-35.2-2
Affected: IC 6-1.1-1-1.5; IC 6-1.1-1-22; IC 6-1.1-35

Sec. 3. "Meal per diem" means the expenses incurred for subsistence. *(Department of Local Government Finance; 50 IAC 20-2-3)*

50 IAC 20-2-4 "Per diem" defined
Authority: IC 6-1.1-35.2-2
Affected: IC 6-1.1-1-1.5; IC 6-1.1-1-22; IC 6-1.1-35

Sec. 4. "Per diem" means expenses incurred during travel. *(Department of Local Government Finance; 50 IAC 20-2-4)*

Rule 3. Training Provisions

50 IAC 20-3-1 Initial training provided by the department
Authority: IC 6-1.1-35.2-2
Affected: IC 6-1.1-35.2-2

Sec. 1. Each year the department shall provide initial training sessions for all newly elected or appointed assessing officials. To ensure that all new officials stated within this section have an opportunity to attend initial training sessions, the department shall conduct the initial training sessions at a minimum of four (4) separate regional locations. *(Department of Local Government Finance; 50 IAC 20-3-1)*

50 IAC 20-3-2 Continuing education provided by the department
Authority: IC 6-1.1-35.2-3
Affected: IC 6-1.1-35.2-3

Sec. 2. The department shall provide continuing education training sessions each year to all assessing officials. To ensure that all assessing officials stated within this section have an opportunity to attend continuing education sessions, the department shall conduct the continuing education sessions at a minimum of four (4) separate regional locations. *(Department of Local Government Finance; 50 IAC 20-3-2)*

Rule 4. Per Diem Allowance

50 IAC 20-4-1 Mileage for attending the initial training sessions and the continuing education sessions
Authority: IC 6-1.1-35.2-2; IC 6-1.1-35.2-3
Affected: IC 6-1.1-35.2-2; IC 6-1.1-35.2-3

Sec. 1. All assessing officials shall be entitled to a mileage per diem allowance designated by the county fiscal body for attending an initial training session or a continuing education session sponsored by the department. If the county fiscal body has not designated a mileage per diem allowance for the attendance of such a session, the county fiscal body shall reimburse for mileage in accordance with the mileage allowance policy of the state, hereby incorporated by reference, located in the administrative rules of the department of administration, Financial Management Circular

97-1, Section 10-3. *(Department of Local Government Finance; 50 IAC 20-4-1)*

50 IAC 20-4-2 Meal per diem for attending the initial training sessions and the continuing education sessions
Authority: IC 6-1.1-35.2-2; IC 6-1.1-35.2-3
Affected: IC 6-1.1-35.2-2; IC 6-1.1-35.2-3

Sec. 2. All assessing officials shall be entitled to a meal per diem allowance designated by the county fiscal body for attending an initial training session or a continuing education session sponsored by the department. The county fiscal body may either establish a meal per diem allowance or set a maximum amount of reimbursement for food expense based on actual receipts submitted by the assessing official. If the county fiscal body fails to designate a meal per diem allowance for attending an initial training session or continuing education session, the department will authorize a meal per diem allowance in accordance with the per diem allowance policy of the state, hereby incorporated by reference, located in the administrative rules of the department of administration, Financial Management Circular 97-1, Section 10-1. *(Department of Local Government Finance; 50 IAC 20-4-2)*

50 IAC 20-4-3 Lodging per diem for attending the initial training sessions and the continuing education sessions
Authority: IC 6-1.1-35.2-2; IC 6-1.1-35.2-3
Affected: IC 6-1.1-35-3; IC 6-1.1-35.2-2; IC 6-1.1-35.2-3

Sec. 3. If attendance of an initial training session or continuing education session requires the official to travel more than fifty (50) miles away from their place of work, the official shall be reimbursed for any lodging expense incurred. The county fiscal body shall designate a lodging per diem allowance. If the county fiscal body has not designated a lodging per diem allowance, the maximum amount the department will authorize for lodging expenses incurred under this section will be those authorized in accordance with the lodging expense allowance policy of the state, hereby incorporated by reference, located in the administrative rules of the department of administration, Financial Management Circular 97-1, Section 10-5. *(Department of Local Government Finance; 50 IAC 20-4-3)*

Rule 5. Payment

50 IAC 20-5-1 Payment by county
Authority: IC 6-1.1-35.2-3
Affected: IC 5-11-14-1; IC 6-1.1-35.2-5

Sec. 1. A county making a payment to an assessing official under this section must make the payment regardless of an appropriation. The payment may be made from the county's cumulative reassessment fund or the county's general fund. *(Department of Local Government Finance; 50 IAC 20-5-1)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 23, 2004 at 11:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058, 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 Toma Shepherd, Department of Local Government Finance, at (317) 233-4361. 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.

Heather Scheel
General Counsel
Department of Local Government Finance

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Proposed Rule
LSA Document #03-235

DIGEST

Adds 50 IAC 18 to provide uniform procedures necessary to review and assess the real property of an industrial facility under IC 6-1.1-8.7. Effective 30 days after filing with the secretary of state.

50 IAC 18

SECTION 1. 50 IAC 18 IS ADDED TO READ AS FOLLOWS:

ARTICLE 18. INDUSTRIAL FACILITY; REAL PROPERTY ASSESSMENT

Rule 1. Purpose

50 IAC 18-1-1 Purpose
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7

Sec. 1. The purpose of this article is to establish procedures to govern the assessment and review of industrial facilities' real property located in qualifying counties under IC 6-1.1-8.7. *(Department of Local Government Finance; 50 IAC 18-1-1)*

Rule 2. Definitions

50 IAC 18-2-1 Applicability
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7

Sec. 1. Unless otherwise indicated, the definitions contained in IC 6-1.1-8.7 also apply to this article. *(Department of Local Government Finance; 50 IAC 18-2-1)*

Rule 3. Filing Petitions for Reassessment

50 IAC 18-3-1 Filing procedure for petition for reassessment
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-4-4; IC 6-1.1-8.7-1; IC 6-1.1-8.7-2

Sec. 1. (a) The filing of petitions must be made by:
(1) personal delivery;
(2) deposit in the United States mail; or
(3) registered or certified mail, return receipt requested.

(b) Petitions may not be filed by facsimile or electronic mail. *(Department of Local Government Finance; 50 IAC 18-3-1)*

50 IAC 18-3-2 Time and place of filing petitions for assessment
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-4-4; IC 6-1.1-8.7-1; IC 6-1.1-8.7-2

Sec. 2. (a) A petition for assessment must be filed with the commissioner of the department and contain the following information:
(1) The name and address of the industrial company to be assessed.
(2) The county and township in which the industrial company is located.
(3) A detailed explanation of the reason a new assessment is being sought.
(4) The names and addresses of the real property owners if the petition is being filed under subsection (b).
(5) The name and title of the person filing on behalf of the industrial company if the petition is being filed under subsection (c).
(6) The name and contact information of the individual designated as petitioner's representative.
(7) A certification from the county auditor that the owners of real property filing under subsection (b) are in fact owners of real property in the township in which the industrial company is located.

(b) Two hundred fifty (250) or more owners of real property in a township may file a petition described under subsection (a) with the department before January 1 of each year that a general reassessment commences under IC 6-1.1-4-4, requesting to have the department assess the real property of an industrial company located in the township.

(c) Prior to submitting a petition to the department under subsection (b), the auditor of the county in which the industrial company is located shall certify the number of petitioners that are owners of real property within the township. The department shall forward a copy of the completed petition to the county auditor and the county assessor of the county in which the industrial company is located within fifteen (15) days of receiving the petition. The county assessor shall forward a copy of the petition to the township assessor who is responsible for the original assessment of the industrial company.

(d) An industrial company as defined in IC 6-1.1-8.7-1 may file a petition under subsection (a) with the department requesting that the department assess the real property of an industrial facility owned or used by the company. *(Department of Local Government Finance; 50 IAC 18-3-2)*

Rule 4. Reassessment of Industrial Company Real Property

50 IAC 18-4-1 Review by the department
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7-5; IC 6-1.1-30-13

Sec. 1. (a) The department shall review all petitions filed under 50 IAC 18-3-2 to determine the completeness and accuracy of the petition. If the department determines that the petition is for any reason incomplete or inaccurate, the petitioner will be afforded an additional thirty (30) days to amend the petition and resubmit it to the department for review.

(b) Upon receipt of a properly filed petition, the department shall make an initial determination and choose to:
(1) grant the petitioner's request and assess the real property of an industrial facility; or
(2) deny the petitioner's request to assess the real property of the industrial facility.
The department will provide a copy of its initial determination to the petitioner's representative, the county assessor, the county auditor, and the township assessor who originally assessed the industrial facility's property. *(Department of Local Government Finance; 50 IAC 18-4-1)*

50 IAC 18-4-2 Assessment by the department
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7-5; IC 6-1.1-30-13

Sec. 2. If the department chooses to assess the real property of an industrial company under section 1(b)(1) of

this rule, the department will determine the true tax value of the property using appraisal methods consistent with those accepted by the International Association of Assessing Officers (IAAO). *(Department of Local Government Finance; 50 IAC 18-4-2)*

50 IAC 18-4-3 Review procedure
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7-5; IC 6-1.1-30-13

Sec. 3. (a) If the department chooses to assess the real property of an industrial company under section 1(b)(1) of this rule, the department may schedule an on-site inspection of the company's industrial facility. The department shall provide notice to the owner of the industrial company and the assessor of the county of the department's intention to enter and inspect the property for assessment purposes not less than thirty (30) days before making a physical inspection of the property.

(b) The department may request that the industrial company and county assessor make available all information necessary or proper to determine the true tax value. If the industrial company fails or refuses to provide the information requested, the department may take necessary actions under IC 6-1.1-30-13. *(Department of Local Government Finance; 50 IAC 18-4-3)*

Rule 5. Certification of Values; Appeal and Review

50 IAC 18-5-1 Preliminary/final certification of value
Authority: IC 6-1.1-8.7-7
Affected: IC 6-1.1-8.7

Sec. 1. (a) The department shall make a preliminary determination of true tax value of the industrial facility and submit the preliminary value to the county auditor, the county assessor, and the petitioner's representative.

(b) The county assessor and the petitioner's representative will have thirty (30) days to review the preliminary true tax value issued under subsection (a) to determine the validity and may present findings to the department in support of or opposition to the department's preliminary determination. The department may extend or decrease this time to review for good cause.

(c) The department may make additions or corrections to the preliminary assessment based on the findings submitted under subsection (b) when making its final certified assessment determination.

(d) The department will certify a final assessment determination of an industrial company's real property to the county auditor, the county assessor, and the petitioner's representative within:
(1) six (6) months of a petition for reassessment filed under 50 IAC 18-3-2(b); or
(2) three (3) months if a petition is filed under 50 IAC 18-3-2(c).

(e) The department will base its final certified value on the evidence provided by the petitioners and county officials and issue a final determination containing the following information:
(1) Original assessment value.
(2) New assessment value if a change is made.
(3) A reason for the change in assessed value if a change is made.
(4) Appeal rights.
(Department of Local Government Finance; 50 IAC 18-5-1)

50 IAC 18-5-2 Appeal of assessments
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7

Sec. 2. (a) The petitioner that petitioned for reassessment of an industrial company's true tax value under this article or the county assessor of the county in which the industrial facility is located may appeal the final assessment determination made by the department under this article to the department.

(b) The department shall hold a hearing on any appeal filed under subsection (a) and issue a final order within one (1) year of the date the appeal is filed. *(Department of Local Government Finance; 50 IAC 18-5-2)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 23, 2004 at 11:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, 1045 IEERB Conference Room, Indianapolis, Indiana the Department of Local Government Finance will hold a public hearing on proposed new rules to govern the assessment of 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, General Counsel, Department of Local Government Finance, at (317) 232-5895 or by e-mail hscheel@tcb.state.in.us. 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 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #02-160

DIGEST

Amends 329 IAC 3.1-9-2 to be consistent with new ground water quality standards at 327 IAC 2-11. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 2002, Indiana Register (25 IR 3495).

Second Notice of Comment Period: January 1, 2003, Indiana Register (26 IR 1358).

Continuation of Second Notice of Comment Period: July 1, 2003, Indiana Register (26 IR 3428).

Notice of First Public Hearing: September 1, 2003, Indiana Register (26 IR 3903).

Date of First Public Hearing: October 21, 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. Because this proposed rule is not substantively different from the amended draft rule published on July 1, 2003, at 26 IR 3428, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from January 1, 2003, through January 31, 2003, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF THE SECOND COMMENT PERIOD

IDEM requested public comment from July 1, 2003, through July 31, 2003, on IDEM's amended draft rule language. No comments were received during the continuation of the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On October 21, 2003, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 3.1-9-2. No comments were made at the first hearing.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

Under IC 4-22-2-28, IDEM has estimated that the economic impact of the proposed amendments to rules at 329 IAC 3.1-9-2 to make the hazardous waste management program consistent with the ground water quality standards in 327 IAC 2-11 will be less than five hundred thousand dollars ($500,000) on the regulated entities. The economic impact analysis for this rule was not submitted to the Legislative Services Agency.

329 IAC 3.1-9-2

SECTION 1. 329 IAC 3.1-9-2, PROPOSED TO BE AMENDED AT 26 IR 1241, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-9-2 Exceptions and additions; final permit standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-14-10; IC 13-22-2; IC 13-30-3; 40 CFR 264

Sec. 2. Exceptions and additions to federal final permit standards are as follows:

(1) Delete 40 CFR 264.1(a) dealing with scope of the permit program and substitute the following: The purpose of this rule is to establish minimum standards which define the acceptable management of hazardous waste at final state permitted facilities.

(2) In 40 CFR 264.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".

(3) Reports to the state required at 40 CFR 264.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.

(4) The written spill report required by 40 CFR 264.56(j) must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6.1.

(5) In 40 CFR 264.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "forms provided by the commissioner".

(6) In 40 CFR 264.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".

(7) In 40 CFR 264.77 regarding additional reports, insert after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:

(A) Two (2) paper copies on the most current form prescribed by the commissioner.

(B) In addition to the paper copies required in clause (A), an electronic report in a format prescribed by the commissioner.

(d) The commissioner may request other information, as required by Subparts F, K through N, and AA through CC of this part, be submitted in an electronic format as prescribed by the commissioner.".

(8) In addition to the requirements in 40 CFR 264, Subpart E, the reports required by IC 13-22-4-3.1 must be kept on file for at least three (3) years after submission to the department.

(9) In 40 CFR 264, subpart F, the term "hazardous constituent" includes the following contaminants:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	15972-60-8
Asbestos	1332-21-4
Atrazine	1912-24-9
Combined beta/photon emitters	10098-97-2, 10028-17-8
Dalapon	75-99-0
Di(2-ethylhexyl)adipate	103-23-1
cis-1,2-Dichloroethylene	156-59-2
Diquat	85-00-7
Ethylbenzene	100-41-4
Fluoride	16984-48-8
Glyphosate	1071-83-6
Gross alpha particle activity (including Radium 226 but excluding radon and uranium)	12587-46-1
Nitrate (as N)	14797-55-8
Nitrite (as N)	14797-65-0
Picloram	1918-02-1
Radium 226 and 228 (combined)	13982-63-3, 15262-20-1
Simazine	122-34-9
Styrene	100-42-5

(10) In 40 CFR 264.93(b), the commissioner may consider 327 IAC 2-11 in addition to the factors listed.

(11) Delete 40 CFR 264.94(a)(2), Table 1, and substitute the following:

Table 1. Maximum Concentration of Constituents for Groundwater Protection

Constituent	Maximum Concentration (mg/L)
Arsenic	0.05
Barium	1.0
Cadmium	0.005
Chromium	0.05
Lead	0.015
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy 1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.0002
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.04
Toxaphene ($C_{10}H_{10}Cl_6$, Technical chlorinated camphene, 67-69 percent chlorine)	0.003
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01

(12) In 40 CFR 264.94(b), the commissioner may consider 327 IAC 2-11 in addition to the factors listed.

(13) In 40 CFR 264.99(g), in addition to the constituents listed in 40 CFR 264, Appendix IX, the commissioner may require a facility to monitor for the following contaminants:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	15972-60-8
Asbestos	1332-21-4
Atrazine	1912-24-9
Combined beta/photon emitters	10098-97-2, 10028-17-8
Dalapon	75-99-0
Di(2-ethylhexyl)adipate	103-23-1
cis-1,2-Dichloroethylene	156-59-2
Diquat	85-00-7
Fluoride	16984-48-8
Glyphosate	1071-83-6
Gross alpha particle activity (including Radium 226 but excluding radon and uranium)	12587-46-1
Nitrate (as N)	14797-55-8
Nitrite (as N)	14797-65-0
Picloram	1918-02-1
Radium 226 and 228 (combined)	13982-63-3, 15262-20-1
Simazine	122-34-9

~~(9)~~ **(14)** Delete 40 CFR 264, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-15.

~~(10)~~ **(15)** Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J are under section 3 of this rule.

~~(11)~~ **(16)** In 40 CFR 264.221(e)(2)(i)(C), delete "permits under RCRA Section 3005(c)" and insert "with final state permits".

~~(12)~~ **(17)** Delete 40 CFR 264.301(l).
~~(13)~~ **(18)** Delete 40 CFR 264, Appendix VI.
~~(14)~~ **(19)** In 40 CFR 264.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".
~~(15)~~ **(20)** In 40 CFR 264.316(f), delete "fiber drums" and substitute "nonmetal containers".
~~(16)~~ **(21)** Delete 40 CFR 264.555(e)(6).
(22) The requirements in subdivisions (9) through (13) do not apply to any of the following industries to a greater extent than the standard of conduct established in the related federal regulation or regulatory policy, until July 1, 2005:

Industry	Standard Industry Classification Code
Steel works, blast furnaces (including coke ovens), and rolling	3312
Gray and ductile iron foundries	3321
Malleable iron foundries	3322
Steel investment foundries	3324
Steel foundries, not elsewhere classified	3325
Aluminum foundries	3365
Copper foundries	3366
Nonferrous foundries, except aluminum and copper	3369

(Solid Waste Management Board; 329 IAC 3.1-9-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3356; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2433; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on February 17, 2004 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Solid Waste Management Board will hold a public hearing on proposed amendments to 329 IAC 3.1-9-2.

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 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 Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-0855, (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 Land Quality, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #03-236

DIGEST

Amends 405 IAC 1-8-2 to define intestinal and multivisceral transplants and to allow intestinal and multivisceral transplant procedures to be reimbursed on a percentage of reasonable cost until such time an appropriate diagnosis-related group (DRG) as determined by the office can be assigned. Effective 30 days after filing with the secretary of state.

405 IAC 1-10.5-2
405 IAC 1-10.5-3

SECTION 1. 405 IAC 1-10.5-2, PROPOSED TO BE AMENDED AT 26 IR 3930, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-2 Definitions
Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1; IC 12-24-1-3; IC 12-25; IC 16-21

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Allowable costs" means Medicare allowable costs as defined by 42 U.S.C. 1395(f).

(c) "All patient DRG grouper" refers to a classification

system used to assign inpatient stays to DRGs.

(d) "Base amount" means the rate per Medicaid stay ~~which~~ **that** is multiplied by the relative weight to determine the DRG rate.

(e) "Base period" means the fiscal years used for calculation of the prospective payment rates including base amounts and relative weights.

(f) "Capital costs" are costs associated with the capital costs of the facility. The term includes, but is not limited to, the following:
(1) Depreciation.
(2) Interest.
(3) Property taxes.
(4) Property insurance.

(g) "Children's hospital" means a freestanding general acute care hospital licensed under IC 16-21 that:
(1) is designated by the Medicare program as a children's hospital; or
(2) furnishes services to inpatients who are predominantly individuals under eighteen (18) years of age, as determined using the same criteria used by the Medicare program to determine whether a hospital's services are furnished to inpatients who are predominantly individuals under eighteen (18) years of age.
"Freestanding" does not mean a wing or specialized unit within a general acute care hospital.

(h) "Cost outlier case" means a Medicaid stay that exceeds a predetermined threshold, defined as the greater of twice the DRG rate or a fixed dollar amount established by the office. This amount may be changed at the time the relative weights are adjusted.

(i) "Diagnosis-related group" or "DRG" means a classification of an inpatient stay according to the principal diagnosis, procedures performed, and other factors that reflect clinically cohesive groupings of inpatient hospital stays utilizing similar hospital resources. Classification is made through the use of the all patient (AP) DRG grouper.

(j) "Discharge" means the release of a patient from an acute care facility. Patients may be discharged to their home, another health care facility, or due to death. Transfers from one (1) unit in a hospital to another unit in the same hospital shall not be considered a discharge unless one (1) of the units is paid according to the level-of-care approach.

(k) "DRG daily rate" means the per diem payment amount for a stay classified into a DRG calculated by dividing the DRG rate by the average length of stay for all stays classified into the DRG.

(l) "DRG rate" means the product of the relative weight multiplied by the base amount. It is the amount paid to reimburse hospitals for routine and ancillary costs of providing care for an inpatient stay.

(m) "Inpatient" means a patient who was admitted to a medical facility on the recommendation of a physician and who received room, board, and professional services in the facility.

(n) "Inpatient hospital facility" means:
(1) a general acute hospital licensed under IC 16-21;
(2) a mental health institution licensed under IC 12-25;
(3) a state mental health institution under IC 12-24-1-3; or
(4) a rehabilitation inpatient facility.

(o) "Intestinal transplant" means the grafting of either the small or large intestines from a donor into a recipient.

~~(o)~~ **(p)** "Less than one-day stay" means a medical stay of less than twenty-four (24) hours.

~~(p)~~ **(q)** "Level-of-care case" means a medical stay, as defined by the office, that includes psychiatric cases, rehabilitation cases, long term care hospital admissions, and certain burn cases.

~~(q)~~ **(r)** "Level-of-care rate" means a per diem rate that is paid for treatment of a diagnosis or performing a procedure subject to subsection ~~(p).~~ **(q).**

~~(r)~~ **(s)** "Long term care hospital" means a freestanding general acute care hospital licensed under IC 16-21 that:
(1) is designated by the Medicare program as a long term hospital; or
(2) has an average inpatient length of stay greater than twenty-five (25) days as determined using the same criteria used by the Medicare program to determine whether a hospital's average length of stay is greater than twenty-five (25) days.
"Freestanding" does not mean a wing or specialized unit within a general acute care hospital.

~~(s)~~ **(t)** "Marginal cost factor" means a percentage applied to the difference between the cost per stay and the outlier threshold for purposes of the cost outlier computation.

~~(t)~~ **(u)** "Medicaid day" means any part of a day, including the date of admission, for which a patient enrolled with the Indiana Medicaid program is admitted as an inpatient and remains overnight. The day of discharge is not considered a Medicaid day. The term does not include any portion of an outpatient service under 405 IAC 1-8-3 that precedes an admission as an inpatient subject to subsection (m).

~~(u)~~ **(v)** "Medicaid stay" means an episode of care provided in an inpatient setting that includes at least one (1) night in the

hospital and is covered by the Indiana Medicaid program.

~~(v)~~ **(w)** "Medical education costs" means the direct costs associated with the salaries and benefits of medical interns and residents and paramedical education programs.

(x) "Multivisceral transplant" means the grafting of either the small or large intestines and one (1) or more of the following organs from a donor into a recipient:

(1) Liver.

(2) Stomach.

(3) Pancreas.

~~(w)~~ **(y)** "Office" means the office of Medicaid policy and planning of the family and social services administration.

~~(x)~~ **(z)** "Outlier payment amount" means the amount reimbursed in addition to the DRG rate for certain inpatient stays that exceed cost thresholds established by the office.

~~(y)~~ **(aa)** "Per diem" means an all-inclusive rate per day that includes routine and ancillary costs and capital costs.

~~(z)~~ **(bb)** "Principal diagnosis" means the diagnosis, as described by ICD-9-CM code, for the condition established after study to be chiefly responsible for occasioning the admission of the patient for care.

~~(aa)~~ **(cc)** "Readmission" means that a patient is admitted into the hospital following a previous hospital admission and discharge for a related condition as defined by the office.

~~(bb)~~ **(dd)** "Rebasing" means the process of adjusting the base amount using more recent claims data, cost report data, and other information relevant to hospital reimbursement.

~~(cc)~~ **(ee)** "Relative weight" means a numeric value that reflects the relative resource consumption for the DRG to which it is assigned. Each relative weight is multiplied by the base amount to determine the DRG rate.

~~(dd)~~ **(ff)** "Routine and ancillary costs" means costs that are incurred in providing services exclusive of medical education and capital costs.

~~(ee)~~ **(gg)** "Transfer" means a situation in which a patient is admitted to one (1) hospital and is then released to another hospital during the same episode of care. Movement of a patient from one (1) unit to another unit within the same hospital will not constitute a transfer unless one (1) of the units is paid under the level-of-care reimbursement system.

~~(ff)~~ **(hh)** "Transferee hospital" means that hospital that accepts a transfer from another hospital.

~~(gg)~~ **(ii)** "Transferring hospital" means the hospital that initially admits and then discharges the patient to another hospital. *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-2; filed Oct 5, 1994, 11:10 a.m.: 18 IR 244; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1082; filed Dec 27, 1996, 12:00 p.m.: 20 IR 1514; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 55)*

SECTION 2. 405 IAC 1-10.5-3, PROPOSED TO BE AMENDED AT 26 IR 3932, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-3 Prospective reimbursement methodology

Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1

Sec. 3. (a) The purpose of this section is to establish a prospective, cost-based reimbursement methodology for services provided by inpatient hospital facilities that are covered by the state of Indiana Medicaid program. The methodology for reimbursement described in this section shall be a prospective system wherein a payment rate for each hospital stay will be established according to a DRG reimbursement methodology or a level-of-care reimbursement methodology **or, in the case of intestinal or multivisceral transplants, as described under subsection (j).** Prospective payment shall constitute full reimbursement unless otherwise indicated herein or as indicated in provider manuals and update bulletins. There shall be no year-end cost settlement payments.

(b) Rebasing of the DRG and level-of-care methodologies will apply information from the most recent available cost report that has been filed and audited by the office or its contractor.

(c) Payment for inpatient stays reimbursed according to the DRG methodology shall be equal to the lower of billed charges or the sum of the DRG rate, the capital rate, the medical education rate, and, if applicable, the outlier payment amount.

(d) Payment for inpatient stays reimbursed as level-of-care cases shall be equal to the lower of billed charges or the sum of the per diem rate for each Medicaid day, the capital rate, the medical education rate, and, if applicable, the outlier payment amount (burn cases only).

(e) Inpatient stays reimbursed according to the DRG methodology shall be assigned to a DRG using the all patient DRG grouper.

(f) The DRG rate is equal to the product of the relative weight and the base amount.

(g) Relative weights will be reviewed by the office and adjusted no more often than annually by using the most recent reliable claims data and cost report data to reflect changes in

treatment patterns, technology, and other factors that may change the relative use of hospital resources. Interim adjustments to the relative weights will not be made except in response to legislative mandates affecting Medicaid participating hospitals. Each legislative mandate will be evaluated individually to determine whether an adjustment to the relative weights will be made. DRG average length of stay values and outlier thresholds will be revised when relative weights are adjusted. The office shall include the costs of outpatient hospital and ambulatory surgical center services that lead to an inpatient admission when determining relative weights. Such costs occurring within three (3) calendar days of an inpatient admission will not be eligible for outpatient reimbursement under 405 IAC 1-8-3. For reporting purposes, the day on which the patient is formally admitted as an inpatient is counted as the first inpatient day.

(h) Base amounts will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing hospital services.

(i) The office may establish a separate base amount for children's hospitals to the extent necessary to reflect significant differences in cost. Each children's hospital will be evaluated individually for eligibility for the separate base amount. Children's hospitals with a case mix adjusted cost per discharge greater than one (1) standard deviation above the mean cost per discharge for DRG services will be eligible to receive the separate base amount established under this subsection. The separate base amount is equal to one hundred twenty percent (120%) of the statewide base amount for DRG services.

(j) The reimbursement methodology for all covered intestinal and multivisceral transplants shall be equal to ninety percent (90%) of reasonable cost, until such time an appropriate DRG as determined by the office can be assigned. The office will use the most recent cost report data that has been filed and audited by the office or its contractor to determine reasonable costs.

~~(j)~~ **(k)** Level-of-care rates will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing hospital services. The office shall not set separate level-of-care rates for different categories of facilities except as specifically noted in this section.

~~(k)~~ **(l)** Level-of-care cases are categorized as DRG numbers 424–428, 429 (excluding diagnosis code 317.XX–319.XX), 430–432, 456–459, 462, and 472, as defined and grouped using the all patient DRG grouper, version 14.1. These DRG numbers represent burn, psychiatric, and rehabilitative care.

~~(l)~~ **(m)** In addition to the burn level-of-care rate, the office may establish an enhanced burn level-of-care rate for hospitals with specialized burn facilities, equipment, and resources for treating severe burn cases. In order to be eligible for the enhanced burn rate, facilities must offer a burn intensive care unit.

~~(m)~~ **(n)** The office may establish separate level-of-care rates for children's hospitals to the extent necessary to reflect significant differences in cost. Each children's hospital will be evaluated individually for eligibility for the separate level-of-care rate. Children's hospitals with a cost per day greater than one (1) standard deviation above the mean cost per day for level-of-care services will be eligible to receive the separate base amount. Determinations will be made for each level-of-care category. The separate base amount is equal to one hundred twenty percent (120%) of the statewide level-of-care rate.

~~(n)~~ **(o)** The office may establish separate level-of-care rates, policies, billing instructions, and frequency for long term care hospitals to the extent necessary to reflect differences in treatment patterns for patients in such facilities. Hospitals must meet the definition of long term hospital set forth in this rule to be eligible for the separate level-of-care rate.

~~(o)~~ **(p)** Capital payment rates shall be prospectively determined and shall constitute full reimbursement for capital costs. Capital per diem rates will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the capital costs associated with efficiently providing hospital services. Capital payment rates shall be adjusted to reflect a minimum occupancy level for nonnursery beds of eighty percent (80%).

~~(p)~~ **(q)** The capital payment amount for Medicaid stays reimbursed under the DRG methodology shall be equal to the product of the per diem capital rate and the average length of stay for all cases within the particular DRG. Medicaid stays reimbursed under the level-of-care methodology will be paid the per diem capital rate for each covered day of care. The office shall not set separate capital per diem rates for different categories of facilities except as specifically noted in this rule.

~~(q)~~ **(r)** Medical education rates shall be prospective, hospital-specific per diem amounts. The medical education payment amount for stays reimbursed under the DRG methodology shall be equal to the product of the medical education per diem rate and the average length of stay for the DRG. Payment amounts for medical education for stays reimbursed under the level-of-care methodology shall be equal to the medical education per diem rate for each covered day of care.

~~(r)~~ **(s)** Facility-specific, per diem medical education rates shall be based on medical education costs per day multiplied by the number of residents reported by the facility. In subsequent years, but no more often than every second year, the office will use the most recent cost report data that has been filed and audited by the office or its contractor to determine a medical education cost per day that more accurately reflects the cost of efficiently providing hospital services. For hospitals with approved graduate medical education programs, the number of residents will be determined according to the most recent available cost report that has been filed and audited by the office or its contractor. Indirect medical education costs shall not be reimbursed.

~~(s)~~ **(t)** Medical education payments will only be available to hospitals that continue to operate medical education programs. Hospitals must notify the office within thirty (30) days following discontinuance of their medical education program.

~~(t)~~ **(u)** For hospitals with new medical education programs, the corresponding medical education per diem will not be effective prior to notification to the office that the program has been implemented. The medical education per diem shall be based on the most recent reliable claims data and cost report data.

~~(u)~~ **(v)** Cost outlier cases are determined according to a threshold established by the office. For purposes of establishing outlier payment amounts, prospective determination of costs per inpatient stay shall be calculated by multiplying a cost-to-charge ratio by submitted and approved charges. Outlier payment amounts shall be equal to the marginal cost factor multiplied by the difference between the prospective cost per stay and the outlier threshold amount. Cost outlier payments are not available for cases reimbursed using the level-of-care methodology except for burn cases that exceed the established threshold.

~~(v)~~ **(w)** Readmissions for the same or related diagnoses within three (3) calendar days after discharge will be treated as the same admission for payment purposes. Readmissions that occur after three (3) calendar days will be treated as separate stays for payment purposes but will be subject to medical review.

~~(w)~~ **(x)** Special payment policies shall apply to certain transfer cases. The transferee, or receiving, hospital is paid according to the DRG methodology or level-of-care methodology. The transferring hospital is paid the sum of the following:

(1) A DRG daily rate for each Medicaid day of the recipient's stay, not to exceed the appropriate full DRG payment, or the level-of-care per diem payment rate for each Medicaid day of care provided.

(2) The capital per diem rate.

(3) The medical education per diem rate. Certain DRGs are established to specifically include only transfer cases; for these DRGs, reimbursement shall be equal to the DRG rate.

~~(x)~~ **(y)** Hospitals will not receive separate DRG payments for Medicaid patients subsequent to their return from a transferee hospital. Additional costs incurred as a result of a patient's return from a transferee hospital are eligible for cost outlier reimbursement subject to subsection ~~(u).~~ **(v).** The office may establish a separate outlier threshold or marginal cost factor for such cases.

~~(y)~~ **(z)** Special payment policies shall apply to less than twenty-four (24) hour stays. For less than twenty-four (24) hours stays, hospitals will be paid under the outpatient reimbursement methodology as described in 405 IAC 1-8-3. *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-3; filed Oct 5, 1994, 11:10 a.m.: 18 IR 245; filed Nov 16, 1995, 3:00 p.m.: 19 IR 664; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1083; filed Dec 27, 1996, 12:00 p.m.: 20 IR 1515; errata filed Mar 21, 1997, 9:45 a.m.: 20 IR 2116; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 57; errata filed Jan 25, 2002, 2:27 p.m.: 25 IR 1906; filed Oct 20, 2003, 10:00 a.m.: 27 IR 863)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 30, 2003 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 2, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to define and reimburse intestinal and multivisceral transplant procedures. Copies of proposed amendments to this rule are now available (along with copies of the public notice) and may be inspected by contacting the Director of the local County Division of Family and Children office, except in Marion County, where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana. Written comments may be directed to IFSSA, Attention: Zachary Jackson, 402 West Washington Street, Room W382, P.O. Box 7083, Indianapolis, Indiana 46207-7083. Correspondence should be identified in the following manner: "COMMENTS RE: LSA DOCUMENT #03-236 PROPOSED CHANGE TO INPATIENT HOSPITAL REIMBURSEMENT SYSTEM". Written comments received will be made available for public display at the address herein of the Office of Medicaid Policy and Planning. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Cheryl Sullivan
Secretary
Office of the Secretary of Family and Social Services

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #03-260

DIGEST

Amends 405 IAC 6-2-3, 405 IAC 6-2-5, 405 IAC 6-3-3, 405 IAC 6-4-2, 405 IAC 6-4-3, 405 IAC 6-5-1, 405 IAC 6-5-2, 405 IAC 6-5-3, 405 IAC 6-5-4, 405 IAC 6-5-6 provisions affecting eligibility and enrollment requirements, and policy for the Indiana Prescription Drug Program. Repeals 405 IAC 6-2-21, 405 IAC 6-2-22, 405 IAC 6-6-3, and 405 IAC 6-6-4. Effective 30 days after filing with the secretary of state.

405 IAC 6-2-3	**405 IAC 6-5-1**
405 IAC 6-2-5	**405 IAC 6-5-2**
405 IAC 6-2-21	**405 IAC 6-5-3**
405 IAC 6-2-22	**405 IAC 6-5-4**
405 IAC 6-3-3	**405 IAC 6-5-6**
405 IAC 6-4-2	**405 IAC 6-6-3**
405 IAC 6-4-3	**405 IAC 6-6-4**

SECTION 1. 405 IAC 6-2-3, AS AMENDED AT 26 IR 697, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-2-3 "Benefit period" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. "Benefit period" means a specified time frame during which an enrollee ~~accrues or~~ expends the cost of prescription drugs. The benefit ~~periods are~~ **period is** specified in 405 IAC 6-5-3. *(Office of the Secretary of Family and Social Services; 405 IAC 6-2-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2456; filed Nov 4, 2002, 12:13 p.m.: 26 IR 697)*

SECTION 2. 405 IAC 6-2-5, AS AMENDED AT 26 IR 697, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-2-5 "Complete application" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 5. "Complete application" means an application ~~which~~ **that** includes the following information about the applicant and applicant's spouse, if applicable:

(1) Name.
(2) Address of domicile.
(3) Date of birth.
(4) Social Security number.
(5) Marital status.
~~(6) Whether the applicant had health insurance with a prescription drug benefit in the past year.~~
~~(7)~~ **(6)** Whether the applicant currently has insurance that includes a prescription drug benefit.
~~(8)~~ **(7)** Whether the applicant is on Medicaid ~~including Medicaid with a spend-down;~~ **prescription drug assistance.**
~~(9)~~ **(8)** Whether the applicant ~~has resided~~ **intends to reside** in Indiana ~~for at least ninety (90) days in the past twelve (12) months.~~ **permanently.**
~~(10)~~ **(9)** Proof of income.
~~(11)~~ **(10)** Signature.

(Office of the Secretary of Family and Social Services; 405 IAC 6-2-5; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2457; filed Nov 4, 2002, 12:13 p.m.: 26 IR 697)

SECTION 3. 405 IAC 6-3-3, AS AMENDED AT 26 IR 699, SECTION 16, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-3-3 Date of availability

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. ~~(a) The program is available to an enrollee beginning with the benefit period prior to the one in which the enrollee applied for enrollment in the program.~~

~~(b)~~ **(a)** After July 1, 2002, program availability will be no sooner than the date complete application is received and approved.

~~(c)~~ **(b)** Those enrollees applying on or before the tenth of a month will have point of service benefits available on the first day of the following month. Those enrollees applying after the tenth of a month will have point of service benefits available no later than the first day of the second following month.

~~(d)~~ **(c)** The program is not available for prescription drugs purchased prior to the month in which the enrollee turned sixty-five (65) years of age. *(Office of the Secretary of Family and Social Services; 405 IAC 6-3-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2459; filed Nov 4, 2002, 12:13 p.m.: 26 IR 699)*

SECTION 4. 405 IAC 6-4-2, AS AMENDED AT 26 IR 699, SECTION 17, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-4-2 Income

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. (a) To be eligible for the program, an applicant's monthly family net income must not exceed the income limit listed below for the applicant's family size:

Family Size	Net Monthly Income Limit
1	~~$997~~ **$1,011**
2	~~$1,344~~ **$1,364**
3	~~$1,690~~ **$1,717**

(b) For each additional family member over three (3), the family member standard shall be added to the net monthly income limit for a family of three **(3)** in order to calculate the net monthly income limit. A child who earns more than the

family member standard per month is not included in the calculation of monthly net income or in family size.

(c) The monthly net income limits are determined by multiplying the annual federal poverty guideline amounts for each family size by one hundred thirty-five percent (135%), dividing by twelve (12), and then rounding up to the next whole dollar.

(d) The income standards in subsection (a) shall increase annually in the same percentage (%) amount that is applied to the federal poverty guideline. The increase shall be effective on the first day of the second month following the month of publication of the federal poverty guideline in the Federal Register.

(e) The Social Security cost of living adjustment (COLA) received annually in January is disregarded until subsection (d) occurs.

(f) A general monthly income disregard of twenty dollars ($20) is allowed and applied per household. It is deducted from the total monthly net income. *(Office of the Secretary of Family and Social Services; 405 IAC 6-4-2; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2459; filed Nov 4, 2002, 12:13 p.m.: 26 IR 699)*

SECTION 5. 405 IAC 6-4-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-4-3 Ineligibility
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. Notwithstanding any other provision of this article, an individual is not eligible for the program if any of the following apply:

(1) ~~The individual had health insurance with a prescription drug benefit during the prior benefit period and, at the time of application,~~ The individual has health insurance with a prescription drug benefit **at the time of application.**

(2) The individual ~~has~~ **is** not ~~resided~~ **domiciled** in Indiana. ~~for ninety (90) days or more during the past twelve (12) months.~~

(3) The individual does not intend to reside permanently in Indiana.

~~(3)~~ **(4)** The individual is an inmate of a correctional facility. *(Office of the Secretary of Family and Social Services; 405 IAC 6-4-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; errata filed May 30, 2001, 10:00 a.m.: 24 IR 3070)*

SECTION 6. 405 IAC 6-5-1, AS AMENDED AT 26 IR 700, SECTION 18, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-1 Prescription drug coverage
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. ~~(a) The program shall issue a partial refund to an enrollee for the purchase of prescription drugs, as defined under this article, based upon the limitations set forth in this rule if an enrollee submits a refund certificate.~~

~~(b) Rather than submit a refund certificate,~~ An eligible enrollee may go to any participating provider to purchase prescription drugs and present his or her prescription and program identification card at the point of service to receive immediate program benefits. At the point of service, the provider shall determine the following:

(1) Whether the enrollee is eligible.

(2) Whether the individual whose name appears on the identification card is the same as the individual for whom the prescription is written.

(3) Whether the enrollee has benefits available.

(4) The price of a prescription drug in accordance with 405 IAC 6-8-3.

(5) That all prescription discounts, if applicable, are taken after the appropriate drug price has been determined.

(6) The amount of the enrollee's copayment.

(Office of the Secretary of Family and Social Services; 405 IAC 6-5-1; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 700)

SECTION 7. 405 IAC 6-5-2, AS AMENDED AT 26 IR 700, SECTION 19, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-2 Benefit defined by family income level
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. (a) The ~~refund or~~ benefit at the time of purchase, which is issued to an enrollee per benefit period, is limited by family monthly net income as follows:

Income Guideline	Individual's Monthly Net Income	Couple's Monthly Net Income	Annual Benefit
Up to 135% of federal poverty guideline	Up to ~~$997~~ **$1,011** per month	Up to ~~$1,344~~ **$1,364** per month	50% benefit, up to $500 benefit/year
Up to 120% of federal poverty guideline	Up to ~~$886~~ **$898** per month	Up to ~~$1,194~~ **$1,212** per month	50% benefit, up to $750 benefit/year
Under 100% of federal poverty guideline	Up to ~~$739~~ **$748** per month	Up to ~~$995~~ **$1,010** per month	50% benefit, up to $1,000 benefit/year

(b) An enrollee and spouse who are enrolled in the program will each receive the maximum ~~refund, or~~ benefit at the time of purchase for prescription drug expenses up to the annual benefit in subsection (a) for which they qualify by family income level.

(c) Upon such time as the enrollee exceeds the annual benefit, the enrollee may use the program identification card to access

program benefit prescription drug rates as defined by 405 IAC 6-8-3 and 405 IAC 6-8-4 until the enrollee benefit period expires. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-2; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 700)*

SECTION 8. 405 IAC 6-5-3, AS AMENDED AT 26 IR 700, SECTION 20, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-3 Benefit period
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. ~~(a) The refund certificate program shall consist of four (4) benefit periods per year, defined as follows:~~
~~(1) Benefit period one: October 1 through December 31;~~
~~(2) Benefit period two: January 1 through March 31;~~
~~(3) Benefit period three: April 1 through June 30;~~
~~(4) Benefit period four: July 1 through September 30.~~

~~(b)~~ The point of service benefit shall be one (1) year of continuous eligibility up to the benefit limit in accordance with section 2 of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 700)*

SECTION 9. 405 IAC 6-5-4, AS AMENDED AT 26 IR 701, SECTION 21, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-4 Benefit duration
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 4. ~~(a) The refund certificate program is available to an enrollee for a maximum of four (4) consecutive benefit periods.~~

~~(b)~~ **(a)** The point of service benefit is available to an enrollee for one (1) year **of continuous benefits.**

~~(c) If an enrollee is utilizing both the refund certificate program and the point of service program, the maximum benefit duration to an enrollee is one (1) year of continuous benefits.~~

~~(d) To reenroll in the refund certificate program or~~ **(b) Following the expiration of the enrollee's last benefit period, the individual must reenroll** for **the** point of service ~~benefits~~ **benefit.** A new application must be submitted to the office in accordance with this article. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-4; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 701)*

SECTION 10. 405 IAC 6-5-6, AS AMENDED AT 26 IR 701, SECTION 23, IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-6 Benefits; program appropriations
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 6. (a) ~~Upon submission of a completed refund certificate, or~~ At the point of service, benefits are available under this program on a first come, first served basis.

(b) Benefits will exist under this program to the extent that appropriations are available for the program.

(c) The state budget director shall determine if appropriations are available to continue offering and paying benefits to enrollees. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-6; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 701)*

SECTION 11. THE FOLLOWING ARE REPEALED: 405 IAC 6-2-21; 405 IAC 6-2-22; 405 IAC 6-6-3; 405 IAC 6-6-4.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 6, 2004 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 2, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on a proposed rule to amend 405 IAC 6, provisions affecting eligibility and enrollment requirements and remove provisions regarding the refund system of processing claims for the Indiana Prescription Drug Program (Hoosier Rx). Written comments may be directed to MS-27 Office of General Counsel, Attention: Maureen Bartolo, 402 West Washington Street, Room W451, Indianapolis, Indiana 46204. Correspondence should be identified in the following manner: "COMMENTS RE: PROPOSED RULE LSA Document #03-260: Indiana Prescription Drug Program/Hoosier Rx". Written comments received will be made available for public display at the above listed address of the Office of General Counsel. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Cheryl Sullivan
Secretary
Office of the Secretary of Family and Social Services

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #03-90

DIGEST

Amends 410 IAC 16.2-3.1-19 and 410 IAC 16.2-8-1 to update the requirement for the Life Safety Code for health

facilities. Effective 30 days after filing with the secretary of state.

410 IAC 16.2-3.1-19
410 IAC 16.2-8-1

SECTION 1. 410 IAC 16.2-3.1-19 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-19 Environment and physical standards

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 19. (a) The facility must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.

(b) The facility must meet the applicable provisions of the ~~1985~~ **2000** edition of the Life Safety Code of the National Fire Protection Association, which is incorporated by reference. This section applies to all facilities initially licensed on or after the effective date of this rule.

(c) Each facility shall comply with fire and safety standards, including the applicable rules of the state fire prevention and building safety commission (675 IAC) where applicable to health facilities.

(d) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits, equipment to maintain the fire detection, alarm, and extinguishing systems, and life support systems in the event the normal electrical supply is interrupted.

(e) When life support systems are used, the facility must provide emergency electrical power with an emergency generator that is located on the premises.

(f) The facility must provide a safe, functional, sanitary, and comfortable environment for residents, staff, and the public. The facility must do the following:

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply.
(2) Have adequate outside ventilation by means of windows or mechanical ventilation, or a combination of the two (2).
(3) Equip corridors with firmly secured handrails.
(4) Maintain an effective pest control program so that the facility is free of pests and rodents.
(5) Provide a home-like environment for residents.

(g) Personnel shall handle, store, process, and transport linen in a manner that prevents the spread of infection as follows:

(1) Soiled linens shall be securely contained at the source where it is generated and handled in a manner that protects workers and precludes contamination of clean linen.
(2) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.
(3) When laundry chutes are used to transport soiled linens, the chutes shall be maintained in a clean and sanitary state.
(4) Linens shall be maintained in good repair.
(5) The supply of clean linens, washcloths, and towels shall be sufficient to meet the needs of each resident. The use of common towels, washcloths, or toilet articles is prohibited.

(h) The facility must provide comfortable and safe temperature levels.

(i) Each facility shall have an adequate heating and air conditioning system.

(j) The heating and air conditioning systems shall be maintained in normal operating condition and utilized as necessary to provide comfortable temperatures in all resident and public areas.

(k) Resident rooms must be designed and equipped for adequate nursing care, comfort, and full visual privacy of residents.

(l) Requirements for bedrooms must be as follows:

(1) Accommodate no more than four (4) residents.
(2) Measure at least eighty (80) square feet per resident in multiple resident bedrooms and at least one hundred (100) square feet in single resident rooms.
(3) A facility initially licensed prior to January 1, 1964, must provide not less than sixty (60) square feet per bed in multiple occupancy rooms. A facility initially licensed after January 1, 1964, must have at least seventy (70) square feet of usable floor area for each bed. Any facility that provides an increase in bed capacity with plans approved after December 19, 1977, must provide eighty (80) square feet of usable floor area per bed.
(4) Any room utilized for single occupancy must be at least eight (8) feet by ten (10) feet in size with a minimum ceiling height of eight (8) feet. A new facility, plans for which were approved after December 19, 1977, must contain a minimum of one hundred (100) square feet of usable floor space per room for single occupancy.
(5) Have direct access to an exit corridor.
(6) Be designed or equipped to assure full visual privacy for each resident in that they have the means of completely withdrawing from public view while occupying their beds.
(7) Except in private rooms, each bed must have ceiling suspended cubicle curtains or screens of flameproof or flame-retardant material, which extend around the bed to provide total visual privacy, in combination with adjacent walls and curtains.
(8) Have at least one (1) window to the outside with an area equal to one-tenth ($^1/_{10}$) of the total floor area of such rooms, up to eighty (80) square feet per bed for rooms occupied by

more than one (1) person and one hundred (100) square feet for single occupancy.

(9) Have a floor at or above grade level. A facility whose plans were approved before the effective date of this rule may use rooms below ground level for resident occupancy if the floors are not more than three (3) feet below ground level.

(m) The facility must provide each resident with the following:

(1) A separate bed of proper size and height for the convenience of the resident.

(2) A clean, comfortable mattress.

(3) Bedding appropriate to the weather, climate, and comfort of the resident.

(4) Functional furniture and individual closet space in the resident's room with clothes racks and shelves accessible to the resident and appropriate to the resident's needs, including the following:

(A) A bedside cabinet or table with hard surface, washable top.

(B) A clothing storage closet (which may be shared), including a closet rod and a shelf for clothing, toilet articles, and other personal belongings.

(C) A cushioned comfortable chair.

(D) A reading or bed lamp.

(E) If the resident is bedfast, an adjustable over-the-bed table or other suitable device.

(5) Each resident room shall have clothing storage, which includes a closet at least two (2) feet wide and two (2) feet deep, equipped with an easily opened door and a closet rod at least eighteen (18) inches long of adjustable height to provide access by residents in wheelchairs. The closet should be tall enough that clothing does not drag on the floor and to provide air circulation. A dresser, or its equivalent in shelf and drawer space equal to a dresser with an area of at least four hundred thirty-two (432) square inches, equipped with at least two (2) drawers six (6) inches deep to provide for clothing, toilet articles and other personal belongings shall also be provided.

(n) Each resident room must be equipped with or located near toilet or bathing facilities such that residents who are independent in toileting, including chair-bound residents, can routinely have access to a toilet on the unit. As used in this subsection, "toilet facilities" means a space that contains a lavatory with mirror and a toilet. Bathing and toilet facilities shall be partitioned or completely curtained for privacy and mechanically ventilated. Toilets, bath, and shower compartments shall be separated from rooms by solid walls or partitions that extend from the floor to the ceiling.

(o) Bathing facilities for residents not served by bathing facilities in their rooms shall be provided as follows:

Residents	Bathtubs or Showers
3 to 22	1
23 to 37	2
38 to 52	3
53 to 67	4
68 to 82	5
83 to 97	6

Portable bathing units may be substituted for one (1) or more of the permanent fixtures with prior approval of the division.

(p) Toilet facilities shall be provided as set out in the building code at the time the facility was constructed. This section applies to facilities and additions to facilities for which construction plans are submitted for approval after July 1, 1984. At least one (1) toilet and lavatory shall be provided for each eight (8) residents. At least one (1) toilet and one (1) lavatory of the appropriate height for a resident seated in a wheelchair shall be available for each sex on each floor utilized by residents.

(q) Toilet rooms adjacent to resident bedrooms shall serve no more than two (2) resident rooms or more than eight (8) beds.

(r) Hot water temperature for all bathing and hand washing facilities shall be controlled by automatic control valves. Water temperature at point of use must be maintained between one hundred **(100)** degrees Fahrenheit ~~(100°F)~~ and one hundred twenty **(120)** degrees Fahrenheit. ~~(120°F).~~

(s) Individual towel bars shall be provided for each resident.

(t) All bathing and shower rooms shall have mechanical ventilation.

(u) The nurses' station must be equipped to receive resident calls through a communication system from the following:

(1) Resident rooms.

(2) Toilet and bathing facilities.

(3) Activity, dining, and therapy areas.

(v) The facility must provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by this rule and as identified in each resident's care plan.

(w) Each facility shall have living areas with sufficient space to accommodate the dining, activity, and lounge needs of the residents and to prevent the interference of one (1) function with another as follows:

(1) In a facility licensed prior to June 1970, the lounge area, which may also be used for dining, shall be a minimum of ten (10) square feet per bed.

(2) In a facility licensed since June 1970, total dining, activity, and lounge area shall be at least twenty (20) square feet per bed.

(3) Facilities for which construction plans are submitted for approval after 1984, the total area for resident dining, activity, and lounge purposes shall not be less than thirty (30) square feet per bed.

(4) Dining, lounge, and activity areas shall be:
(A) readily accessible to wheelchair and ambulatory residents; and
(B) sufficient in size to accommodate necessary equipment and to permit unobstructed movement of wheelchairs, residents, and personnel responsible for assisting, instructing, or supervising residents.
(5) Dining tables of the appropriate height shall be provided to assure access to meals and comfort for residents seated in wheelchairs, geriatric chairs, and regular dining chairs.

(x) Room-bound residents shall be provided suitable and sturdy tables or adjustable over-bed tables or other suitable devices and chairs of proper height to facilitate independent eating.

(y) Facilities having continuing deficiencies in the service of resident meals directly attributable to inadequacies in the size of the dining room or dining areas shall submit a special plan of correction detailing how meal service will be changed to meet the resident's needs.

(z) A comfortably furnished resident living and lounge area shall be provided on each resident occupied floor of a multistory building. This lounge may be furnished and maintained to accommodate activity and dining functions.

(aa) The provision of an activity area shall be based on the level of care of the residents housed in the facility. The facility shall provide the following:
(1) Equipment and supplies for independent and group activities and for residents having special needs.
(2) Space to store recreational equipment and supplies for the activities program within or convenient to the area.
(3) Locked storage for potentially dangerous items, such as scissors, knives, razor blades, or toxic materials.
(4) In a facility for which plans were approved after December 19, 1977, a rest room large enough to accommodate a wheelchair and equipped with grab bars located near the activity area.

(bb) Maintain all essential mechanical, electrical, and resident care equipment in safe operating condition. Each facility shall establish and maintain a written program for maintenance to ensure the continued upkeep of the facility.

(cc) The facility must provide one (1) or more rooms designated for resident dining and activities. These rooms must:
(1) be well-lighted with artificial and natural lighting;
(2) be well-ventilated, with nonsmoking areas identified;
(3) be adequately furnished with structurally sound furniture that accommodates residents' needs, including those in wheelchairs; and
(4) have sufficient space to accommodate all activities.

(dd) Each facility shall have natural lighting augmented by artificial illumination, when necessary, to provide light intensity and to avoid glare and reflective surfaces that produce discomfort and as indicated in the following table:

Minimum Average Area	Foot-Candles
Corridors and interior ramp	15
Stairways and landing	20
Recreation area	40
Dining area	20
Resident care room	20
Nurses' station	40
Nurses' desk for charts and records	60
Medicine cabinet	75
Utility room	15
Janitor's closet	15
Reading and bed lamps	20
Toilet and bathing facilities	20
Food preparation surfaces and utensil washing facilities	70

(ee) Each facility shall have a policy concerning pets. Pets may be permitted in a facility but shall not be allowed to create a nuisance or safety hazard. Any pet housed in a facility shall have periodic veterinary examinations and required immunizations in accordance with state and local health regulations.

(ff) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a) is an offense;
(2) subsection (b), (c), (d), (e), (f), (g), (h), (i), (j), (r), (u), or (bb) is a deficiency; and
(3) subsection (k), (l), (m), (n), (o), (p), (q), (s), (t), (v), (w), (x), (z), (aa), (cc), (dd), or (ee) is a noncompliance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-19; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1543, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 2. 410 IAC 16.2-8-1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-8-1 Incorporation by reference
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28

Sec. 1. (a) When used in this article, references to the publications in this subsection shall mean the version of that publication listed below. The following publications are hereby incorporated by reference:
(1) National Fire Protection Association (NFPA) 101, Life Safety Code Handbook ~~(1985~~ **(2000** Edition). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box ~~99101,~~ **9101,** Quincy, Massachusetts 02269-9904.
(2) 42 CFR 493 (October 1, 1995 Edition).
(3) 42 CFR 483.75(e)(1) (October 1, 1995 Edition).

(b) Federal rules that have been incorporated by reference do not include any later amendments than those specified in the

incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. All incorporated material is available for public review at the Indiana state department of health. *(Indiana State Department of Health; 410 IAC 16.2-8-1; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1588, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 22, 2003 at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed amendments of 410 IAC 16.2-3.1-19 and 410 IAC 16.2-8-1 to update the requirement for the Life Safety Code for health facilities. Copies of these rules are now on file at the Health Care Regulatory Services Commission at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 515 PROFESSIONAL STANDARDS BOARD

Proposed Rule
LSA Document #03-135

DIGEST

Adds 515 IAC 4 to establish the process whereby a teacher obtains a proficient practitioner license. Effective 30 days after filing with the secretary of state.

515 IAC 4

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

ARTICLE 4. PROFESSIONAL EDUCATOR LICENSE TEACHERS

Rule 1. General Provisions; Definitions

515 IAC 4-1-1 Introduction
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. The purpose of this article is to define how teachers may obtain a proficient practitioner license. *(Professional Standards Board; 515 IAC 4-1-1)*

515 IAC 4-1-2 Definitions
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. 2. The following definitions apply throughout this article:

(1) "Assessment" means:
(A) a portfolio assessment, if one has been approved by the board for the relevant licensing area;
(B) if no portfolio assessment has been approved by the board for the relevant licensing area, an alternative assessment or experience approved by the board; or
(C) any general assessments of professional teaching knowledge and performance related to standards-based teaching as the board may by rule require.

(2) "Assessment plan" means that portion of the professional development plans adopted as part of the school improvement activities governed by IC 20-1-1-6.5 and 515 IAC 1-3-1.

(3) "Assessment program" refers to the two (2) year period of the initial practitioner license, the first year of which involves working with an assigned mentor. During the second year of the assessment program, the teacher completes the assessment.

(4) "Beginning teacher" means a person who:
(A) holds an initial practitioner license defined in 515 IAC 8;
(B) is employed as a teacher under a contract described in IC 20-6.1-4 or by an accredited nonpublic school (511 IAC 6.1-1-1);
(C) is a designated teacher;
(D) has not successfully completed the required assessments under this rule or an equivalent out-of-state assessment;
(E) has less than two (2) years of creditable teaching experience outside Indiana as defined by rule adopted by the board; and
(F) is not covered by rules covering the workplace specialist (515 IAC 10).

(5) "Board" means the professional standards board.

(6) "Designated teacher" means the teacher primarily identified by the school to have primary academic responsibility for:
(A) the class; or
(B) delivery of services specific to the license.
The term includes a teacher-of-record as defined in 511 IAC 7-17-72.

(7) "Equivalent out-of-state assessment" means a standards-based assessment for beginning teachers established by another state that is recognized by the board as substantially equivalent to the beginning teacher assessment under this rule.

(8) "Extended assessment program" refers to the proce-

dure by which an individual denied a proficient practitioner license after completion of all requirements of the assessment program during the second assessment year may obtain that license.
(9) "First assessment year" for a beginning teacher means the first full year of service.
(10) "Indiana mentoring and assessment program" or "IMAP" refers to the process outlined in this rule by which a teacher holding an initial practitioner (515 IAC 8) may obtain a proficient practitioner license.
(11) "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.
(12) "Mentor" means a person who is assigned under 515 IAC 4-2-8.
(13) "Mentor faculty trainer" refers to a person who has successfully completed a faculty training program offered by the board.
(14) "Representative" means an individual who is authorized to represent an individual who is unable to deliver materials under 515 IAC 4-2-5(f).
(15) "Second assessment year" means the year of teaching in an Indiana public or accredited nonpublic school after the first assessment year.
(16) "Standards-based teaching" means teaching based on the standards adopted by the board.
(17) "Teacher" means a professional person as defined by IC 20-6.1-1-8 whose position in the school corporation requires certain teacher training preparations and licensing.
(18) "Teaching credential" means a license or permit. *(Professional Standards Board; 515 IAC 4-1-2)*

515 IAC 4-1-3 Initial practitioner license equivalency
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. 3. The initial practitioner license as used in this rule is defined in 515 IAC 8 and is equivalent to an initial standard license under IC 20-6.1-3. *(Professional Standards Board; 515 IAC 4-1-3)*

515 IAC 4-1-4 Proficient practitioner license equivalency
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. 4. The proficient practitioner license as used in this rule is equivalent to a renewed standard license under 515 IAC 1-2-3. *(Professional Standards Board; 515 IAC 4-1-4)*

515 IAC 4-1-5 Obtaining a license
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. 5. (a) Teachers preparing in Indiana will obtain the initial practitioner license through a certification of successful completion from a teacher preparation program approved under 515 IAC 3 and in the licensure areas defined by 515 IAC 8. Teachers preparing in another state may obtain the initial practitioner license through a certification of successful completion from a teacher preparation program in that state as defined by 515 IAC 9.

(b) A teacher who holds the initial practitioner instructional license may obtain the proficient practitioner license through the assessment program. A teacher who holds a valid license from another state may obtain the proficient practitioner license either through the assessment program or through other board-approved assessments or equivalent out-of-state assessment.

(c) A teacher who holds the initial practitioner administrative (515 IAC 8-1-40 through 515 IAC 8-1-44) or school services license (515 IAC 8-1-45 through 515 IAC 8-1-48) may obtain the proficient practitioner license by completing the assessment during the second year of the initial practitioner license. *(Professional Standards Board; 515 IAC 4-1-5)*

515 IAC 4-1-6 Renewable license
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. 6. (a) A proficient practitioner license is a renewable five (5) year license issued to a teacher who has successfully completed a two (2) year assessment program. A proficient practitioner license may be obtained under 515 IAC 4-2.

(b) The initial practitioner license may be renewed twice without a recommendation from a licensing advisor if the teacher has not been employed as defined in section 2(4)(B) of this rule.

(c) The initial practitioner license may not be renewed for teachers who have been enrolled in but not completed a second assessment year (section 2(15) of this rule) or an extended assessment program (section 2(8) of this rule) unless a request for additional time (515 IAC 4-2-5(d)) has been granted.

(d) The initial practitioner license shall not be renewed for teachers who do not obtain a qualifying score on the assessment after participation in an extended assessment program. *(Professional Standards Board; 515 IAC 4-1-6)*

Rule 2. Proficient Practitioner

515 IAC 4-2-1 License
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) A proficient practitioner license is a renewable five (5) year license issued to a teacher who has successfully completed a two (2) year assessment program. A beginning teacher may obtain a proficient practitioner license by

completing any general assessment adopted by the board under this rule and by completing the required assessment of a portfolio completed during the assessment program in a licensing area for which the board has approved a portfolio assessment or by completing an alternate assessment or experience defined by the board if the board has not approved a portfolio assessment for the licensing area.

(b) Each teacher seeking a proficient practitioner license shall complete a portfolio, or alternate assessment or experience, in the second assessment year. The teacher must complete the portfolio or alternate assessment or experience designated by the board for the licensing area that appears on the teacher's initial practitioner license.

(c) An applicant for a proficient practitioner license must have completed either the portfolio or alternate assessment or experience within two (2) years of the effective date of the initial practitioner license, except for an applicant in an extended assessment program or an applicant who holds an emergency permit (515 IAC 9-1-17 through 515 IAC 9-1-24). *(Professional Standards Board; 515 IAC 4-2-1)*

515 IAC 4-2-2 License application
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. 2. (a) An application for a proficient practitioner license or renewal of an initial practitioner license (section 3(b) of this rule) must include the following:

(1) A completed application in a format approved by the board.

(2) A limited criminal history report 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 amount established in 515 IAC 1-2-19, in the form of a cashier's check, certified check, money order, or by electronic payment if the board accepts fees electronically.

(4) The initial practitioner license or equivalent as determined by the board.

(5) For a proficient practitioner license only, documentation described in section 4 or 5 of this rule that the assessment program or an equivalent experience recognized by the board has been successfully completed.

(b) An incomplete application may be returned. The applicant may be required to also submit a new fee as a result of submitting an incomplete application. The applicant is responsible for any delays in license processing caused by the submission of an incomplete application. *(Professional Standards Board; 515 IAC 4-2-2)*

515 IAC 4-2-3 License application; additional requirements
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. 3. (a) In addition to the items in section 2 of this rule, an application for a proficient practitioner license from a candidate completing the assessment program in Indiana must contain the following:

(1) If a portfolio is required, a completed portfolio in a format approved by the board.

(2) If a portfolio is not required, a completed alternate assessment or documentation of completed experiences in a format approved by the board.

(3) Documentation of the results of any general assessment as required by the board.

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

(b) In addition to the items in section 2 of this rule, applications for renewal of an initial practitioner license for individuals who meet the criteria defined in section 12 of this rule must include a recommendation from a licensing advisor. Individuals completing the academic course requirements at an accredited out-of-state institution must submit an official transcript. *(Professional Standards Board; 515 IAC 4-2-3)*

515 IAC 4-2-4 License application; additional requirements for out-of-state applicants
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. 4. In addition to the items in section 3 of this rule, an application for a proficient practitioner license from an out-of-state candidate who has not completed an assessment program in Indiana must contain:

(1) either proof of:

(A) at least three (3) years of creditable teaching experience in another state; or

(B) documentation of successful completion of an assessment program in another state that the board has recognized as equivalent; or

(2) documentation of the results of any general assessment as required by the board under this rule.

(Professional Standards Board; 515 IAC 4-2-4)

515 IAC 4-2-5 Assessment portfolio
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. 5. (a) An application containing a complete assessment portfolio under section 3 of this rule or documentation of an alternate assessment or experience under section 4 of this rule may be submitted anytime during the second assessment year. No application containing an assessment portfolio may be submitted after May 1 of the second assessment year.

(b) Scoring of an assessment portfolio will begin no later than June 30 each year and must be completed by September 1 of that year.

(c) Results of scoring of an assessment portfolio will be reported to the beginning teacher and the principal no later than thirty (30) days after the date by which scoring must be completed under this section.

(d) A teacher may request additional time to submit an assessment portfolio by submitting a request for extension of time in a format approved by the board. A request for extension of time must be received by the board at least thirty (30) days before the deadline to submit the assessment portfolio, and a copy of this request must be transmitted simultaneously to the beginning teacher's principal and superintendent. The request for extension of time must identify the following:

(1) The extraordinary circumstances that prevent timely completion of the portfolio.

(2) Appropriate documentation of the extraordinary circumstances, such as the following:

(A) Medical records or physician's statements in the case of medical situations.

(B) Evidence, such as death certificates or court records, in the case of family situations or statements from the principal and the superintendent in the case of emergency employment reassignment.

(3) A statement of the following:

(A) What work is completed.

(B) What work remains to be completed.

(C) Why completion is impossible in the time remaining.

(e) An appropriate extension may be granted if warranted.

(f) A request under subsection (d) on behalf of a beginning teacher by the beginning teacher's representative shall be valid if the beginning teacher submits a verification in a format approved by the board within sixty (60) days of submission of the request.

(g) An assessment portfolio completed during an extended assessment program may be submitted upon completion and will be scored within sixty (60) days of submission to the board with results reported immediately to the beginning teacher, the principal, and the superintendent. *(Professional Standards Board; 515 IAC 4-2-5)*

515 IAC 4-2-6 Teacher in an assessment program

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. 6. In addition to the requirements of section 5 of this rule and this section, a teacher in an assessment program shall do the following:

(1) Demonstrate an understanding of the standards that apply to the initial practitioner licensing.

(2) Demonstrate an understanding of the school improvement plan adopted under IC 20-1-1-6.5.

(3) Communicate regularly with the assigned mentor according to the school's assessment plan.

(4) Monitor changes made by the board, if any, in the applicable standards and the assessment program.

(5) Maintain access to electronic messaging (e-mail) and respond to any inquiries made by the board or under the assessment plan in a timely manner.

(Professional Standards Board; 515 IAC 4-2-6)

515 IAC 4-2-7 Support by school and school employees

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. 7. (a) A school and its employees shall support a beginning teacher in an assessment program by doing the following:

(1) Adopting an assessment plan, adopted pursuant to rules adopted under IC 20-1-1-6.5, that meets the needs of the school and its teachers.

(2) Supporting the teacher and the mentor by allowing adequate time for the teacher and the mentor to communicate about the teacher's work.

(3) Appointing a mentor who meets the criteria adopted by the board and any additional criteria in the assessment plan (515 IAC 4-1-2(2)).

(4) Encouraging participation by the beginning teacher in the support activities required by the professional development plan.

(5) Monitoring changes made by the board, if any, in the applicable teaching and mentor standards and the assessment program.

(6) Maintaining access to electronic messaging (e-mail) and responding to any inquiries made by the board or under the assessment plan in a timely manner.

(7) Accommodating teachers who begin teaching during a school year, for example, at the start of the spring semester or other grading period, by providing support and mentoring activities until the beginning of the next school year, which would qualify as the first assessment year under this rule.

(b) On or before October 1 of the first assessment year, or within fifteen (15) days of the teacher's employment if the teacher is employed after October 1, the principal of each building or other appropriate supervisor must notify the board on the board's form of the following:

(1) The name of the institution that recommended the teacher for the initial practitioner license.

(2) The name of the employing corporation.

(3) The name of the school in which the teacher is teaching.

(4) The name of the mentor assigned to the teacher.
(5) Necessary information to assure accurate payment of the mentor stipend (section 10 of this rule).

(c) On or before October 1 of the second assessment year, the principal of each building or other appropriate supervisor must notify the board on the board's form of the following:
(1) The name of the employing corporation.
(2) The name of the school in which the teacher is teaching.
(3) The name of the mentor assigned to the teacher.
(4) Necessary information to assure accurate payment of the mentor stipend (section 10 of this rule).
(Professional Standards Board; 515 IAC 4-2-7)

515 IAC 4-2-8 Mentor requirements
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. 8. A mentor assigned to a beginning teacher shall do the following:
(1) Demonstrate a knowledge and understanding of the standards for mentors of beginning teachers approved by the board on June 21, 2000. Copies of these standards can be obtained from the Indiana Professional Standards Board, 101 West Ohio Street, Suite 300, Indianapolis, IN 46204.
(2) Monitor changes made by the board, if any, in the mentor standards, the applicable standards (515 IAC 11), and the assessment program.
(3) Maintain access to electronic messaging (e-mail) and respond to any inquiries made by the board under the assessment plan in a timely fashion.
(Professional Standards Board; 515 IAC 4-2-8)

515 IAC 4-2-9 Board program to certify mentors
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. 9. (a) The board shall maintain criteria for programs to prepare, assess, and certify mentors.

(b) The board shall approve the following:
(1) Programs to certify mentors based on performance and completion of mentor training programs.
(2) Such programs so that mentors are certified to serve.

(c) Beginning with the 2005-2006 school year, to be eligible for payment of a mentor stipend, a mentor must either:
(1) have completed a mentor training program approved by the board; or
(2) be enrolled in a mentor training program approved by the board for which completion will result in certification of the mentor no later than the beginning of the 2006-2007 school year.
(Professional Standards Board; 515 IAC 4-2-9)

515 IAC 4-2-10 Minimum criteria for mentor
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. 10. (a) No later than June 30 of each year, the board shall establish and publish the procedures by which a mentor will receive a mentor stipend.

(b) An assessment plan shall include a requirement that the mentor shall perform the minimum criteria for eligibility for a mentor stipend as established by the board.

(c) If funds are available, a mentor who has met the minimum criteria and who has served as the mentor of a beginning teacher for at least one hundred twenty (120) days shall be eligible for the mentor stipend.

(d) Accredited schools (511 IAC 6.1) shall provide documentation of eligibility for the mentor stipend to the board in a format approved by the board.

(e) Within thirty (30) days of receipt of documentation of eligibility for payment of a mentor stipend, the board shall pay the earned portion of the mentor stipend. This payment shall be made to the school corporation (511 IAC 6.1-1-2(s)) and directly to the mentor if an accredited nonpublic school. *(Professional Standards Board; 515 IAC 4-2-10)*

515 IAC 4-2-11 Extended assessment program
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. 11. (a) The board shall no later than the time frame specified in section 5(c) of this rule notify each beginning teacher who did not successfully complete all required assessments of the teacher's eligibility for an extended assessment program. The notice shall also be given to the beginning teacher's principal and superintendent.

(b) The notification to the teacher shall contain the teacher's initial practitioner license with a new expiration date that allows participation in the extended assessment program during the first school year following the assessment program. It shall also include a statement of intent form for the beginning teacher to complete and provide to the school where the extended assessment program will be completed.

(c) The beginning teacher shall enroll in the extended assessment program by:
(1) submitting the statement of intent form to the school; and
(2) registering with the board in a format approved by the board.
Upon receipt of such notice and of the beginning teacher's

completed statement of intent form, the school shall modify its assessment plan to include a personalized program to assist the teacher in completing the extended assessment program.

(d) The board shall develop a model program and information that assist teachers in an extended program.

(e) Upon the request of the beginning teacher or the school in which the extended program will occur, the board shall provide the results of the assessment to the beginning teacher's preparation program or to another preparation program designated by the beginning teacher. The preparation institution shall be invited to assist the teacher and the school in developing the personalized program in the extended assessment program.

(f) A teacher who did not properly apply for a proficient practitioner license and did not properly request an extension of time to apply is not eligible for an extended assessment program. *(Professional Standards Board; 515 IAC 4-2-11)*

515 IAC 4-2-12 Initial practitioner license expiration
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. 12. (a) Teachers who have been enrolled in but who fail to complete an assessment program (515 IAC 4-1-6(c) or 515 IAC 4-1-6(d)) are not eligible to renew an initial practitioner license.

(b) Teachers who have not been enrolled in an assessment program within six (6) years of completion of an approved teacher training program (515 IAC 3) will be required to obtain a recommendation from a licensing advisor following the procedures for an initial practitioner license defined by 515 IAC 8.

(c) Teachers eligible for renewal of an initial practitioner license as described in subsection (b) must complete six (6) semester hours of academic credit in the preceding six (6) years. Academic credit must be earned in the content or developmental level listed on the initial practitioner license.

(d) Teachers who obtain an initial practitioner license as described in subsection (c) may be renewed as described in 515 IAC 4-1-6. *(Professional Standards Board; 515 IAC 4-2-12)*

515 IAC 4-2-13 Training programs
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. 13. (a) The board must provide training programs for mentor faculty trainers and for scorers of portfolios and alternative assessments.

(b) A mentor who completes an approved mentor training program shall receive a certificate of completion from that program. A copy of this certificate should be submitted to the board with the annual enrollment form for the teacher (section 7(b) of this rule).

(c) A certificate of completion of mentor training is valid for five (5) years. The board will establish criteria for renewal of the mentor training certificate.

(d) The board must train a sufficient number of scorers to allow timely scoring of portfolios and alternative assessments. *(Professional Standards Board; 515 IAC 4-2-13)*

515 IAC 4-2-14 Portfolio assessment
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. 14. (a) The board will establish a qualifying score for each portfolio assessment.

(b) Each portfolio assessment will be required for at least three (3) school years before the board may establish a qualifying score for that portfolio.

(c) Until a qualifying score is established, the portfolio assessment may be scored to provide the following:
(1) The teacher with feedback about teaching knowledge and skills.
(2) Information to each preparation program about the quality of its preparation of teachers.

(d) Until a qualifying score is established, the board may score all portfolios completed or may score a statistically valid sample of completed portfolios. *(Professional Standards Board; 515 IAC 4-2-14)*

515 IAC 4-2-15 Portfolio assessment exceptions
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. 15. A candidate for an initial practitioner administrative license (515 IAC 9-1-18 through 515 IAC 9-1-23) is required to complete only one (1) assessment program during his or her professional career. *(Professional Standards Board; 515 IAC 4-2-15)*

515 IAC 4-2-16 Incomplete assessment
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. 16. (a) An incomplete assessment will not be scored. An incomplete assessment may not be returned to the candidate, who may be required to pay a new fee, if applicable.

(b) The candidate will be notified in writing of the status of an incomplete portfolio.

(c) The candidate is responsible for any delays in license processing caused by the submission of an incomplete assessment.

(d) The board will not be required to provide scoring for partial or incomplete assessments. Receipt of materials after the May 1 deadline will result in a delay of the assessment scoring until the next regularly scheduled scoring activity.

(e) Individuals who submit partial or incomplete assessments are not eligible for an extension as described in section 11 of this rule and are required to resubmit all required materials. *(Professional Standards Board; 515 IAC 4-2-16)*

515 IAC 4-2-17 Speech-language pathology
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. 17. Teachers with an initial practitioner license in speech-language pathology (515 IAC 8) may fulfill the requirements of the assessment program by completion of a clinical fellowship recognized by the American Speech-Language-Hearing Association (American Speech-Language-Hearing Association, 10801 Rockville Pike, Rockville, MD 20852) or by completion of an assessment portfolio (515 IAC 4-1-2(1)). *(Professional Standards Board; 515 IAC 4-2-17)*

515 IAC 4-2-18 Teachers on emergency 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. 18. (a) Teachers who hold an instructional emergency permit (515 IAC 9-1-17) or emergency permit for administration or school services (515 IAC 9-1-18 through 515 IAC 9-1-24) may be enrolled in the first assessment year (515 IAC 4-1-2(9)) during their first year of employment under an emergency permit.

(b) Enrollment of teachers on emergency permits should be completed as described in section 7(b) of this rule.

(c) Mentors of teachers enrolled under this section must meet the criteria described in section 10 of this rule.

(d) Teachers who complete their first assessment year under this section and who do not hold an initial practitioner license must complete the assessment (section 5 of this rule) during the first year of the initial practitioner license. For individuals enrolled under this section, this year shall be the second assessment year (515 IAC 4-1-2(15)).

(e) Teachers who complete their first assessment year under this section and who hold an initial practitioner license may complete the assessment portfolio (section 5 of this rule) during the second assessment year.

(f) Teachers employed on an emergency permit in a content area not listed on the initial practitioner license may renew the initial practitioner license as described in 515 IAC 4-1-6. For these teachers, the first year of employment in a content area listed on the initial practitioner license shall be the second assessment year. *(Professional Standards Board; 515 IAC 4-2-18)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 9, 2004 at 10:00 a.m., at the Professional Standards Board office, Third Floor, 101 West Ohio Street, Indianapolis, Indiana the Professional Standards Board will hold a public hearing on a proposed new rule concerning certain requirements for the issuance of proficient practitioner 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 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

Proposed Rule
LSA Document #03-186

DIGEST

Amends 655 IAC 1-2.1, 655 IAC 1-3, and 655 IAC 1-4 to amend certification programs and certifications, update certain National Fire Protection Association Standards, amend the mandatory training program and the mandatory training requirements, and make conforming section changes. Effective 30 days after filing with the secretary of state.

655 IAC 1-1-5.1
655 IAC 1-2.1-2
655 IAC 1-2.1-3
655 IAC 1-2.1-6.1
655 IAC 1-2.1-6.2
655 IAC 1-2.1-6.3
655 IAC 1-2.1-6.4
655 IAC 1-2.1-12
655 IAC 1-2.1-14
655 IAC 1-2.1-15
655 IAC 1-2.1-19
655 IAC 1-2.1-19.1
655 IAC 1-2.1-20
655 IAC 1-2.1-23
655 IAC 1-2.1-23.1
655 IAC 1-2.1-24
655 IAC 1-2.1-24.1
655 IAC 1-2.1-24.2
655 IAC 1-2.1-24.3
655 IAC 1-2.1-88
655 IAC 1-3-1
655 IAC 1-3-2
655 IAC 1-3-4
655 IAC 1-3-5
655 IAC 1-3-7
655 IAC 1-3-8
655 IAC 1-4-1
655 IAC 1-4-2

SECTION 1. 655 IAC 1-1-5.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-1-5.1 Certifications under this rule; requirements

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 5.1. (a) Any Indiana fire service person may enter the voluntary certification program by submitting an application and verification by competency based testing for the certification sought. Applications shall be legibly signed by the authorized instructor who has taken responsibility for the verified competencies. Applications shall be legibly completed in full. Applications shall be provided by the board upon request.

(b) Any Indiana nonfire service person may enter the voluntary certification program by submitting an application and verification by competency based testing for the certification sought. Applications shall be legibly signed by the authorized instructor who has taken responsibility for the verified competencies. Applications shall be legibly completed in full. Applications shall be provided by the board upon request.

(c) Certifications are available for the following:

(1) Fire service person as follows:

Certification	Requirements
Basic Firefighter	655 IAC 1-2.1-2 and 655 IAC 1-2.1-3
Firefighter I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-4
Firefighter II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-5
Driver/Operator-Pumper	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6
Driver/Operator-Aerial	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.1
Driver/Operator-Wildland Fire Apparatus	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.2
Driver/Operator-Aircraft Crash and Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.3
Driver/Operator-Mobile Water Supply	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.4
Airport Firefighter-Aircraft Crash and Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-7
Fire Officer I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-8
Fire Officer II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-9
Fire Officer III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-10
Fire Officer IV	655 IAC 1-2.1-2 and 655 IAC 1-2.1-11
~~Fire Inspector I~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-12~~
~~Fire Inspector II~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-13~~
~~Fire Inspector III~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-14~~
~~Fire Investigator I~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-15~~
Public Fire and Life Safety Educator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-16
Public Fire and Life Safety Educator II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-17
Public Fire and Life Safety Educator III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-18
Safety Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-22
Firefighter-Wildland Fire Suppression I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-23
Firefighter-Wildland Fire Suppression II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-23.1
~~Hazardous Materials First Responder-Awareness~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-24~~
~~Hazardous Materials First Responder-Operations~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-24.1~~
~~Hazardous Materials Technician~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-24.2~~
Emergency Vehicle Technician I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-25 through 655 IAC 1-2.1-35
Emergency Vehicle Technician II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-36 through 655 IAC 1-2.1-60
Fire Service Engineering Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-61 through 655 IAC 1-2.1-64
Motor Sports Emergency Responder	655 IAC 1-2.1-2 and 655 IAC 1-2.1-65 through 655 IAC 1-2.1-74
Rescue Technician-Rope Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75
Rescue Technician-Surface Water Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.1
Rescue Technician-Vehicle and Machinery Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.2
Rescue Technician-Confined Space Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.3
Rescue Technician-Structural Collapse Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.4
Rescue Technician-Trench Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.5
Swift Water Rescue Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-76.1 through 655 IAC 1-2.1-76.3
Land-Based Firefighter-Marine Vessel Fires	655 IAC 1-2.1-2 and 655 IAC 1-2.1-88(a)

Fire Medic I	655 IAC 1-2.1-2 and ~~655 IAC~~ 655 IAC 1-2.1-89
Fire Medic II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-90
Fire Medic III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-91
Fire Medic IV	655 IAC 1-2.1-2 and 655 IAC 1-2.1-92
Public Information Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-95

(2) Fire department instructors as follows:

Certification	Requirements
Instructor I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-19
Instructor II/III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-20
Instructor-Swift Water Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-19.1

(3) Firefighting training and education programs as follows:

Certification	Requirements
Basic Firefighter	655 IAC 1-2.1-3
Firefighter I	655 IAC 1-2.1-4(a)
Firefighter II	655 IAC 1-2.1-5(a)
Driver/Operator-Pumper	655 IAC 1-2.1-6(a)
Driver/Operator-Aerial	655 IAC 1-2.1-6.1(a)
Driver/Operator-Wildland Fire Apparatus	655 IAC 1-2.1-6.2(a)
Driver/Operator-Aircraft Crash and Rescue	655 IAC 1-2.1-6.3(a)
Driver/Operator-Mobile Water Supply	655 IAC 1-2.1-6.4(a)
Airport Firefighter-Aircraft Crash and Rescue	655 IAC 1-2.1-7(a)
Fire Officer I	655 IAC 1-2.1-8(a)
Fire Officer II	655 IAC 1-2.1-9(a)
Fire Officer III	655 IAC 1-2.1-10(a)
Fire Officer IV	655 IAC 1-2.1-11(a)
Fire Inspector I	655 IAC 1-2.1-12(a)
Fire Inspector II	655 IAC 1-2.1-13(a)
Fire Inspector III	655 IAC 1-2.1-14(a)
Fire Investigator I	655 IAC 1-2.1-15(a)
Public Fire and Life Safety Educator I	655 IAC 1-2.1-16(a)
Public Fire and Life Safety Educator II	655 IAC 1-2.1-17(a)
Public Fire and Life Safety Educator III	655 IAC 1-2.1-18(a)
Safety Officer	655 IAC 1-2.1-22(a)
Firefighter-Wildland Fire Suppression I	655 IAC 1-2.1-23(a)
Firefighter-Wildland Fire Suppression II	655 IAC 1-2.1-23.1(a)
Hazardous Materials First Responder-Awareness	655 IAC 1-2.1-24
Hazardous Materials First Responder-Operations	655 IAC 1-2.1-24.1
Hazardous Materials Technician	655 IAC 1-2.1-24.2
Hazardous Materials - Incident Command	**655 IAC 1-2.1-24.3**
Emergency Vehicle Technician I	655 IAC 1-2.1-25 through 655 IAC 1-2.1-35
Emergency Vehicle Technician II	655 IAC 1-2.1-36 through 655 IAC 1-2.1-60
Fire Service Engineering Technician	655 IAC 1-2.1-61 through 655 IAC 1-2.1-64
Motor Sports Emergency Responder	655 IAC 1-2.1-65 through 655 IAC 1-2.1-74
Rescue Technician-Rope Rescue	655 IAC 1-2.1-75
Rescue Technician-Surface Water Rescue	655 IAC 1-2.1-75.1
Rescue Technician-Vehicle and Machinery Rescue	655 IAC 1-2.1-75.2
Rescue Technician-Confined Space Rescue	655 IAC 1-2.1-75.3
Rescue Technician-Structural Collapse Rescue	655 IAC 1-2.1-75.4
Rescue Technician-Trench Rescue	655 IAC 1-2.1-75.5
Swift Water Rescue Technician	655 IAC 1-2.1-76.1 through 655 IAC 1-2.1-76.3
Land-Based Firefighter-Marine Vessel Fires	655 IAC 1-2.1-88(a)
Fire Medic I	655 IAC 1-2.1-89
Fire Medic II	655 IAC 1-2.1-90
Fire Medic III	655 IAC 1-2.1-91
Fire Medic IV	655 IAC 1-2.1-92
Public Information Officer	655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-95
Instructor I	655 IAC 1-2.1-19(a)
Instructor II/III	655 IAC 1-2.1-20(a)
Instructor-Swift Water Rescue	655 IAC 1-2.1-19.1

(4) Nonfire service person as follows:

Certification	Requirements
Fire Inspector I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-12
Fire Inspector II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-13
Fire Inspector III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-14
Fire Investigator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-15
Hazardous Materials First Responder - Awareness	**655 IAC 1-2.1-24**
Hazardous Materials First Responder - Operations	**655 IAC 1-2.1-24.1**
Hazardous Materials - Technician	**655 IAC 1-2.1-24.2**
Hazardous Materials - Incident Command	**655 IAC 1-2.1-24.3**
Public Fire and Life Safety Educator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-16
Public Fire and Life Safety Educator II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-17
Public Fire and Life Safety Educator III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-18
Swift Water Rescue Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-76.1 through 655 IAC 1-2.1-76.3
Public Information Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-95

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-1-5.1; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3384; filed Sep 24, 1999, 10:02 a.m.: 23 IR 326; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1157; errata, 26 IR 383)

SECTION 2. 655 IAC 1-2.1-2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-2 Firefighter certification; general
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 2. (a) Each of the performance objectives for any level of fire service person or nonfire service person certification shall meet the following criteria:

(1) Each shall be performed in a timely manner, safely, and with competent technique as outlined in the appropriate standard.

(2) Each objective shall be met in its entirety.

(b) It is not required for the objectives to be mastered in the order that they appear. The local program shall establish the instructional priority to prepare individuals to meet the performance objectives of this rule.

(c) Performance of practical skills objectives covered by this rule shall be evaluated by a certified instructor who shall be an authorized evaluator. An evaluator shall not evaluate sections taught by him or her. An evaluator shall be at least an Instructor I and selected by a Lead Evaluator.

(d) When the word "demonstrate" is used in this rule, performance of practical skills objectives shall require that actual performance and operation be accomplished unless otherwise indicated within the specific objective. Simulation, explanation, and illustration may be substituted when actual operation is not feasible.

(e) Wherever in this rule the terms "rules", "regulations", "procedures", "supplies", "apparatus", or "equipment" are used, they shall mean those of the authority having jurisdiction.

(f) "Authority having jurisdiction" means the organization, office, or individual responsible for approving equipment, an installation, or a procedure. The term includes, without limitation, the board, the state fire marshal, a federal, state, regional, or local department or individual having legal ~~l~~ authority. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-2; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3390; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1160; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 3. 655 IAC 1-2.1-3 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-3 Basic Firefighter requirements
Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 3. (a) This section comprises the minimum requirements for certification as a Basic Firefighter.

(b) The candidate shall have successfully completed the requirements of 655 IAC 1-4-2 and the following:

(1) NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents, Chapter ~~2~~ **4**-Competencies for the First Responder at the Awareness Level and Chapter ~~3~~ **5**-Competencies for the First Responder at the Operational Level, ~~1997~~ **2002** Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) NFPA 1001, Standard for Firefighter Professional Qualifications, Section 2-3, 1997 Edition, published by the National Fire Protection Association, Batterymarch Park,

Quincy, Massachusetts 02269.
(3) Training in records needed in the following:
(A) In the fire service, including the following:
(i) Hose tests.
(ii) Ladder tests.
(iii) Equipment maintenance.
(iv) Such others as are used in the authority having jurisdiction.
(B) In Indiana, laws affecting the following:
(i) Fire service inspections.
(ii) Investigations.
(iii) Fire suppression.
(iv) Driving.
(v) Such others as are in effect in the authority having jurisdiction.
(4) Training course mandated in IC 36-8-10.5-7(b).
(5) NFPA 1001, Standard for Firefighter Professional Qualifications, Sections 4-1.1.1 and 4-1.1.2, 1997 Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(c) To the extent that Sections 3-1.1 and 4-1.1 of NFPA 1001 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~5.~~ **2.** *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-3; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3390; filed Sep 24, 1999, 10:02 a.m.: 23 IR 330; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 4. 655 IAC 1-2.1-6.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6.1 Driver/Operator-Aerial
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6.1. (a) The minimum training standards for Driver/Operator-Aerial certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, **Section 1-3.4,** Chapters 2 and 4, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, which is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 and 4 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 9.

(b) The candidate shall have been certified as at least a Firefighter I or Second Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) The candidate shall hold an appropriate valid driver's license.

(d) The candidate shall have been certified as a Driver/Operator-Pumper, if the applicant is a member of a fire department that has a pumper on its aerial apparatus. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6.1; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1161; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 5. 655 IAC 1-2.1-6.2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6.2 Driver/Operator-Wildland Fire Apparatus
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6.2. (a) The minimum training standards for Driver/Operator-Wildland Fire Apparatus certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, **Section 1-3.4,** Chapters 2 and 6, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, which is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 and 6 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 9.

(b) The candidate shall have been certified as at least a Firefighter I or Second Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) The candidate shall hold an appropriate valid driver's license.

(d) The candidate shall have been certified as a Driver/Operator-Pumper. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6.2; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1161; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 6. 655 IAC 1-2.1-6.3 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6.3 Driver/Operator-Aircraft Crash and Rescue
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6.3. (a) The minimum training standards for Driver/Operator-Aircraft Crash and Rescue certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, **Section 1-3.4,** Chapters 2 and 7, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, which is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 and 7 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 9.

(b) The candidate shall have been certified as at least a Firefighter I or Second Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) The candidate shall hold an appropriate valid driver's license. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6.3; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1161; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 7. 655 IAC 1-2.1-6.4 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6.4 Driver/Operator-Mobile Water Supply

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6.4. (a) The minimum training standards for Driver/Operator-Mobile Water Supply certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, **Section 1-3.4,** Chapters 2 and 8, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, which is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 and 8 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 9.

(b) The candidate shall have been certified as at least a Firefighter I or Second Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) The candidate shall hold an appropriate valid driver's license.

(d) The candidate shall have been certified as a Driver/Operator-Pumper, if the applicant is a member of a fire department that has a pumper on its mobile water supply apparatus. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6.4; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1162; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 8. 655 IAC 1-2.1-12 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-12 Fire Inspector I

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 12. ~~(a)~~ The minimum training standards for Fire Inspector I certification shall be as set out in that certain document, being titled as NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, Chapter 3, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter 3 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 8.

~~(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-12; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3392; filed Sep 24, 1999, 10:02 a.m.: 23 IR 331; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 9. 655 IAC 1-2.1-14 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-14 Fire Inspector III

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 14. ~~(a)~~ The minimum training standards for Fire Inspector III certification shall be as set out in that certain document, being titled as NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, Chapter 5, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter 5 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 8.

~~(b) The candidate shall be certified as a Fire Inspector II.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-14; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3393; filed Sep 24, 1999, 10:02 a.m.: 23 IR 332; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 10. 655 IAC 1-2.1-15 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-15 Fire Investigator I

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 15. ~~(a)~~ The minimum training standards for Fire Investigator I certification shall be as set out in that certain document, being titled as NFPA 1033, Standard for Professional Qualifications for Fire Investigator, Chapter 3, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter 3 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 4.

~~(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-*

2.1-15; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3393; filed Sep 24, 1999, 10:02 a.m.: 23 IR 332; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)

SECTION 11. 655 IAC 1-2.1-19 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-19 Instructor I
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 19. (a) The minimum training standards for Instructor I certification shall be as set out in that certain document, being titled as NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, Chapter ~~2,~~ ~~1996~~ **4, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule.

(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) To maintain certification, the candidate shall accrue a minimum of thirty (30) hours of teaching or attendance at classes in training in adult education, for example:
(1) learning objectives;
(2) test construction; or
(3) classroom teaching;
that shall be reported every three (3) years. Such report shall be received by the board not later than thirty (30) days after the expiration of the three (3) year period that commenced on the date of initial certification or the applicable three (3) year anniversary of such date.

(d) Training in adult education shall be classes that teach instructors how to teach adult students. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-19; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3394; filed Sep 24, 1999, 10:02 a.m.: 23 IR 332; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 12. 655 IAC 1-2.1-19.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-19.1 Instructor-Swift Water Rescue
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 19.1. (a) The minimum training standards for Instructor-Swift Water Rescue certification shall be as set out in this section.

(b) The candidate shall be certified as follows:
(1) An Instructor I or ~~a currently certified~~ **an** Indiana Law Enforcement Academy instructor.
(2) A Swift Water Rescue Technician.
(3) By the Indiana emergency medical services commission as at least a First Responder. ~~and such certification shall be current and valid.~~
(4) A currently certified Red Cross Life Guard.

(c) The candidate shall have served as an assistant instructor for at least one (1) training course for Swift Water Rescue Technician.

(d) The candidate shall have completed passing evaluations on a minimum of two (2) training modules in such training course. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-19.1; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1163; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 13. 655 IAC 1-2.1-20 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-20 Instructor II/III
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 20. (a) The minimum training standards for Instructor II/III certification shall be as set out in that certain document, being titled as NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, Chapters ~~3~~ **5** and ~~4,~~ ~~1996~~ **6, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule.

(b) The candidate shall:
(1) either be certified as:
(A) an Instructor I; or
(B) a First Class Instructor; ~~and have successfully completed a board-approved six (6) hour up-date class of instruction;~~ and
(2) have taught, documented, and reported to the board thirty (30) hours of instruction.

(c) To maintain certification, the candidate shall accrue a minimum of thirty (30) hours of teaching or attendance at classes in training in adult education, for example:
(1) learning objectives;
(2) test construction; or
(3) classroom teaching;
that shall be reported every three (3) years. Such report shall be received by the board not later than thirty (30) days after the expiration of the three (3) year period that commenced on the date of initial certification, or the applicable three (3) year anniversary of such date.

(d) Training in adult education shall be classes that teach instructors how to teach adult students. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-20; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3394; filed Sep 24,*

1999, 10:02 a.m.: 23 IR 332; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)

SECTION 14. 655 IAC 1-2.1-23 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-23 Firefighter-Wildland Fire Suppression I
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 23. (a) The minimum training standards for Firefighter-Wildland Fire Suppression I certification shall be as set out in that certain document, being titled as NFPA 1051, Standard for Wildland Firefighter Professional Qualifications, ~~Chapter 3, 1995~~ **Chapters 4 and 5, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that ~~Chapter 3 requires~~ **Chapters 4 and 5 require** compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~7.~~ **1.**

(b) The candidate shall be certified as a Basic Firefighter. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-23; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3395; errata filed Oct 3, 1996, 3:00 p.m.: 20 IR 332; filed Sep 24, 1999, 10:02 a.m.: 23 IR 333; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 15. 655 IAC 1-2.1-23.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-23.1 Firefighter-Wildland Fire Suppression II
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 23.1. (a) The minimum training standards for Firefighter-Wildland Fire Suppression II certification shall be as set out in that certain document, being titled as NFPA 1051, Standard for Wildland Firefighter Professional Qualifications, Chapter ~~4, 1995~~ **6, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter ~~4~~ **6** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~7.~~ **1.**

(b) The candidate shall be certified as a ~~Fire Officer I or Instructor II/III.~~ **Firefighter-Wildland Fire Suppression I.** *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-23.1; filed Sep 24, 1999, 10:02 a.m.: 23 IR 333; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 16. 655 IAC 1-2.1-24 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-24 Hazardous Materials First Responder-Awareness
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 24. ~~(a)~~ The minimum training standards for Hazardous Materials First Responder-Awareness certification shall be as set out in that certain document, being titled as NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents Chapter ~~2, 1997~~ **4, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter ~~2~~ **4** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~12.~~ **2.**

~~(b) The candidate shall have successfully completed the requirements of 655 IAC 1-4-2.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-24; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3395; filed Sep 24, 1999, 10:02 a.m.: 23 IR 333; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 17. 655 IAC 1-2.1-24.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-24.1 Hazardous Materials First Responder-Operations
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 24.1. ~~(a)~~ The minimum training standards for Hazardous Materials First Responder-Operations certification shall be as set out in that certain document, being titled as NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents, Chapter ~~3, 1997~~ **5, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter ~~3~~ **5** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~12.~~ **2.**

~~(b) The candidate shall have successfully completed the requirements of 655 IAC 1-4-2.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-24.1; filed Sep 24, 1999, 10:02 a.m.: 23 IR 334; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 18. 655 IAC 1-2.1-24.2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-24.2 Hazardous Materials-Technician
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 24.2. ~~(a)~~ The minimum training standards for Hazardous Materials-Technician certification shall be as set out in that

certain document, being titled as NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents, Chapter ~~4, 1997~~ **6, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter ~~4~~ **6** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~12.~~ **2.**

~~(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-24.2; filed Sep 24, 1999, 10:02 a.m.: 23 IR 334; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 19. 655 IAC 1-2.1-24.3 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-24.3 Hazardous Materials-Incident Command

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 24.3. (a) The minimum training standards for Hazardous Materials-Incident Command certification shall be as set out in that certain document, being titled as NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents, Chapter 7, 2002 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter 7 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 2.

(b) The candidate shall have been certified as a Hazardous Materials First Responder-Awareness and Hazardous Materials First Responder-Operations. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-24.3)*

SECTION 20. 655 IAC 1-2.1-88 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-88 Land-Based Firefighter–Marine Vessel Fires

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 88. (a) The minimum training standards for Land-Based Firefighter–Marine Vessel Fires certification shall be as set out in that certain document, being titled as NFPA 1405, Guide for Land-Based Firefighters Who Respond to Marine Vessel Fires, Chapters 2 through 15, ~~1990~~ **2001** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 through 15 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 16.

(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-88; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3412; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262)*

SECTION 21. 655 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

Rule 3. Mandatory Training Program

655 IAC 1-3-1 Title; purpose; availability

Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 1. (a) ~~Title.~~ This rule ~~(655 IAC 1-3)~~ shall be known as the administrative rule for the board of firefighting personnel standards and education and shall be published by the board ~~of Firefighting Personnel Standards and Education~~ for general use and distribution under that title. Whenever the term "this rule" is used throughout this rule, ~~(655 IAC 1-3)~~ it shall mean the administrative rule for the board of firefighting personnel standards and education. ~~hereafter called the board.~~

(b) ~~Purpose.~~ The purpose of this rule is to provide for administration by the board ~~of firefighting personnel standards and education~~ of a mandatory training program for fire service personnel as required by IC 36-8-10.5.

(c) ~~Availability.~~ This rule ~~(655 IAC 1-3)~~ is available for purchase from the Board of Firefighting Personnel Standards and Education, ~~1099 North Meridian Street, Suite 900,~~ **302 West Washington Street, Room E239,** Indianapolis, Indiana 46204. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-1; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383)*

SECTION 22. 655 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-3-2 Administrative adjudication

Authority: IC 36-8-10.5-7
Affected: IC 4-21.5; IC 36-8-10.5

Sec. 2. The administrative adjudication and court review procedures of the board shall be governed by ~~the Administrative Adjudication~~ IC 4-21.5, **Administrative Orders and Procedures.** *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-2; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383)*

SECTION 23. 655 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-3-4 Fire chief responsibility
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 4. The fire chief of each individual fire department ~~(both full-time and volunteer)~~ shall have the responsibility for the administration of this rule in the hiring, rehiring, appointing, or electing of firefighters. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-4; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383)*

SECTION 24. 655 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-3-5 Mandatory training program
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 5. The mandatory training program ~~will~~ **shall** include firefighting personnel in fire departments in the following areas:

(1) Full-time (paid/career) firefighters employed by ~~a~~ political subdivisions.

(2) Volunteer firefighters in volunteer fire companies.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-5; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383)

SECTION 25. 655 IAC 1-3-7 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-3-7 Certification by the board
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 7. The board shall certify applications from fire service ~~personal~~ **personnel** as having successfully completed ~~the 24-hour~~ mandatory training specified in IC 36-8-10.5, which are attested to by the signature of the fire chief of the fire department and by an instructor certified by the board. ~~of fire fighting personnel standards and education. The board shall attempt to consider applications at its first meeting after their receipt in the board's office.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-7; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383)*

SECTION 26. 655 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-4-1 Title; purpose; availability
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 1. (a) ~~Title.~~ This rule ~~(655 IAC 1-4)~~ shall be known as the Fire Fighter Mandatory Training Program, 1988 edition, and shall be published by the board ~~of Firefighting Personnel Standards and Education~~ for general distribution and use under that title.

(b) ~~Purpose.~~ The purpose of this rule ~~(655 IAC 1-4)~~ is to establish a mandatory training program for firefighters by the board. ~~of firefighting personnel standards and education.~~

(c) ~~Availability.~~ This rule ~~(655 IAC 1-4)~~ is available for purchase from the Board of Firefighting Personnel Standards and Education, ~~1099 North Meridian Street, Suite 900,~~ **302 West Washington Street, Room E239,** Indianapolis, Indiana 46204. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-4-1; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2629; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383)*

SECTION 27. 655 IAC 1-4-2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-4-2 General requirements for firefighter mandatory training
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 2. (a) ~~Intent.~~ These requirements are intended only to familiarize the recruit firefighter with introductory personal safety and safe evolutions prior to engaging in emergency firefighter activities. These requirements are not intended to replace the ~~state of Indiana board of firefighting personnel standards and education~~ **board's** requirements for firefighter voluntary certification program.

(1) The intent of this document is to provide rules for the minimum mandatory personal safety training of those individuals entering or reentering the fire service.

(2) It is not required for the objectives to be mastered in the order that they appear.

(3) The local fire department, instructor, or fire chief shall establish the instructional priority of the mandatory training.

(4) This is intended to be a minimum training program. Expanded scope and creativity of local training programs is encouraged.

(b) Minimum components are as follows:

(1) Orientation. ~~1 Hour.~~ Includes communication procedures, how alarms are received; who, what, when, **and** where of local fire department.

(2) Personal safety. ~~2 Hours.~~ Includes reason for protective clothing usage, ~~i.e.~~ **for example,** helmet, coat, boots, and gloves; safe handling of tools.

(3) Forcible entry. ~~2 Hours.~~ Includes safely finding hidden fires; safely entering structure or building when it is locked; nomenclature of tools.

(4) Ventilation. ~~2 Hours.~~ Includes safe letting of hot gases

and smoke escape; safe procedures; where to properly ventilate.

(5) Apparatus. ~~2 Hours.~~ Includes safely mounting and dismounting from apparatus; riding on apparatus; safe driving of apparatus; basic traffic and firefighting liability laws.

(6) Ladders. ~~4 Hours.~~ Includes safe setting positions for ground ladders; safe climbing and getting off of ladders; feeling for weakened floors on ~~2nd~~ **second** floor or higher before getting off ladder; different types of ladders used in fire service.

(7) Self-contained breathing apparatus. ~~6 Hours.~~ Includes critical needs for wearing self-contained breathing apparatus; safe practices in its use; nomenclatures of self-contained breathing apparatus; safely donning and doffing of self-contained breathing apparatus.

(8) Hose loads. ~~1.5 Hours.~~ Includes how to properly load hose; different types of hose loads; safely removing different hose loads; accessing water sources by drafting or hydrants.

(9) Streams. ~~1.5 Hours.~~ Includes safe fire stream velocity and gallons per minute; properly opening and closing of nozzles.

(10) Basic recognition of special hazards. ~~2 Hours.~~ Includes recognition of special hazards; DOT hazardous materials placarding recognition; structural hazards indicating imminent collapse or cave-in; recognition of suspicious fires; dangers of backdraft and flashover; overhead electrical wires; special safety procedures.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-4-2; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2629; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383)

SECTION 28. 655 IAC 1-3-8 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 23, 2004 at 10:00 a.m., at the Wayne Township Fire Department, 700 North High School Road, Room E, Indianapolis, Indiana the Board of Firefighting Personnel Standards and Education will hold a public hearing on proposed amendments concerning certification programs, certifications, the updating of certain National Fire Protection Association standards, the mandatory training program and the mandatory training requirements, and to make conforming section changes. Copies of these rules are now on file at the Office of the State Fire Marshal, 402 West Washington Street, Room E241 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

M. Tracy Boatwright
State Fire Marshal
Board of Firefighting Personnel Standards and Education

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule
LSA Document #03-278

DIGEST

Amends 675 IAC 12-4-11 of the General Administrative Rules to address the use of Class 1 structures classified as A, B, E, or M occupancies for residential occupancy for up to 30 days in a calendar year. Effective 30 days after filing with the secretary of state.

675 IAC 12-4-11

SECTION 1. 675 IAC 12-4-11 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-4-11 Occupancy of existing buildings

Authority: IC 22-13-2-13
Affected: IC 12-17.2; IC 22-12-6-6; IC 22-13-2-2; IC 22-13-2-8; IC 36-8-17-13

Sec. 11. (a) Any building or structure lawfully in existence at the time of the adoption of any rule of the commission for new construction may have its existing use or occupancy continued without having to be altered to comply with such a rule.

(b) No change in the character or use of any building or structure shall be permitted ~~which~~ **that** shall cause the building or structure to be classified within a different occupancy group or within a different division of the same occupancy group, unless such building or structure **complies with, or is made to comply with:**

(1) ~~complies with, or is made to comply with,~~ the current rules of the commission for new construction for the proposed revised use of the building;

(2) ~~complies with, or is made to comply with,~~ the provisions of 675 IAC 12-8; or

(3) ~~complies with, or is made to comply with,~~ the provisions of 675 IAC 12-13.

Exception: Buildings constructed prior to the effective date of the 1998 Indiana building code (675 IAC 13) that change occupancy classification shall not be considered as a change in occupancy as outlined as follows:

Previous Classification	1998 IBC Classifications
B-1	S-3
B-2	B, F-1, M, S-1, and S- 2
B-3	S-4 and S-5
B-4	F-2 and S-2
Open Parking Garage	S-4
M	U

(c) Occupancies or rooms, in which the use is changed to include the consumption of alcoholic beverages, and unseparated accessory uses to those occupancies or rooms, where the

total area of such unseparated rooms and accessory uses exceeds five thousand (5,000) square feet, shall be made to comply with the sprinkler requirements of 675 IAC 13. For the use to be considered as separated, the separation shall not be less than as required for a one (1) hour occupancy separation in accordance with 675 IAC 13.

(d) The office of the state building commissioner may conduct an inspection to determine ~~the following:~~ **that:**

(1) ~~that~~ a building or structure may be exempted from the rules for new construction under 675 IAC 12-8 or 675 IAC 12-13; or

(2) ~~that~~ a proposed change in character or use of any Class 1 building or structure will not cause noncompliance with subsection (b).

(e) Subsection (b) shall not prohibit the following accessory uses within Class 2 structures provided they are in one (1) room ~~which~~ **that** does not exceed five hundred (500) square feet in floor area:

(1) Wholesale and retail sales.

(2) Offices.

(3) Craft or hobby workshops.

(4) Storage and sales rooms for other than hazardous materials.

(5) Instructional classroom for less than twenty (20) adults or children when used not more than twelve (12) hours per week or four (4) hours in any one (1) day.

(f) Subsection (b) shall not prohibit the following accessory uses within Class 2 structures: Class I child care homes and Class II child care homes, licensed in accordance with IC 12-17.2.

(g) Subsection (b) shall not prohibit the use of a Class 1 structure for residential occupancy not to exceed thirty (30) days in a calendar year, if all of the following conditions are met:

(1) The portion of the Class 1 structure being used for the residential occupancy is classified as A, B, E, or M occupancy.

(2) All existing exit signs shall be fully operational at all times.

(3) All means of egress shall be completely clear and unobstructed. All rooms used for sleeping shall exit to a corridor or exterior exit door.

(4) All emergency lighting shall be fully operational at all times. If emergency lighting is not installed in the building, it shall be installed in accordance with the current Indiana building code.

(5) All fire alarm systems, including manual pull stations, smoke detectors, horns, and strobes shall be fully operational and shall have been tested in accordance with the rules of the commission within the preceding twelve (12) months. Test documentation shall be maintained on the premises for inspection by the fire official.

(6) For buildings without an automatic alarm system, battery-operated smoke alarms shall be located in each room or space in which people will be sleeping. These alarms shall be tested at least monthly and shall be kept fully operational at all times. Test documentation shall be maintained on the premises for inspection by the fire official.

(7) No extension cords shall be used. Power strips with circuit breakers are permitted.

(8) Smoking within the building or buildings shall be prohibited at all times. "No Smoking" signs shall be posted in all areas used for residential purposes.

(9) Emergency evacuation plans shall be established in writing, including procedures to be followed in case of emergencies, location of exits, and gathering place outside for assembly after evacuation in the event of a fire or other emergency. All individuals using the building shall be trained in the emergency evacuation procedures.

(10) There shall be telephone access at all times for notification of emergencies.

(11) The officer on duty at the nearest responding fire station shall be notified that the building is being used for a residential occupancy, and a calendar shall be provided to the fire station showing the dates that people will be using the building for a residential occupancy and listing a contact phone number for a representative of the organization that uses the structure for residential purposes.

(12) All of the members, volunteers, and employees of the following who are present when the building is used for residential occupancy shall be trained in emergency procedures and shall be equipped with flashlights:

(A) The entity that operates the facility for nonresidential purposes.

(B) The organization that uses the structure for residential purposes.

(13) At least one (1) adult member, volunteer, or employee of:

(A) the entity that operates the facility for nonresidential purposes; or

(B) the organization that uses the structure for residential purposes;

shall be awake and on duty at all times that people are sleeping in the building.

(14) There shall be at least one (1) adult member, volunteer, or employee of:

(A) the entity that operates the facility for nonresidential purposes; or

(B) the organization that uses the structure for residential purposes;

on site for each fifteen (15) people who will be sleeping in the building.

(Fire Prevention and Building Safety Commission; 675 IAC 12-4-11; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2684, eff Aug 1, 1987

[IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the secretary of state. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jul 23, 1992, 1:00 p.m.: 15 IR 2585, eff Jun 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #92-11 was filed Jul 23, 1992.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2084; errata filed Apr 15, 1998, 10:30 a.m.: 21 IR 3367; filed Nov 20, 2000, 3:25 p.m.: 24 IR 998; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 16, 2004 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room D, Indianapolis, Indiana; ***AND*** *April 6, 2004 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing on proposed amendments to a provision of the General Administrative Rules, 675 IAC 12, to make a substantive change. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Patrick Ralston
Secretary
Fire Prevention and Building Safety Commission

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

Proposed Rule
LSA Document #03-187

DIGEST

Amends 865 IAC 1-13-5 to revise the continuing education requirements to develop mechanisms to allow for courses sponsored by providers that are approved in another state to qualify for Indiana continuing education credit. Effective 30 days after filing with the secretary of state.

865 IAC 1-13-5

SECTION 1. 865 IAC 1-13-5 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-5 Courses from approved and unapproved providers

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7
Affected: IC 25-1-11; IC 25-21.5

Sec. 5. (a) Hours of continuing education will be granted to registered land surveyors who have successfully completed courses offered by land surveyor continuing education providers approved ~~pursuant to~~ **under** 865 IAC 1-14 or specific courses from nonapproved providers that the board has approved **under subsections (b) and (c) or that qualify under subsections (d) through (f).**

(b) It is the obligation of the registered land surveyor to submit course material from unapproved providers either not more than six (6) months after taking the course or three (3) months before the end of the renewal cycle, whichever comes first. The required information must include the following:

(1) The course outline or description.

(2) A certified statement signed by the registered land surveyor stating that the entire course was completed.

(3) The information required in 865 IAC 1-14-13.

(4) The name and professional biography of the instructor.

(c) To qualify under subsection (b), courses must be on the subject matter listed in section 6 or 7 of this rule and instructors must meet the requirements of 865 IAC 1-14-9. Course content, instructor qualifications, and provider qualifications must meet the requirements provided in 865 IAC 1-14. If the submitted information does not meet the requirements for approval, the course may be rejected and credit denied.

(d) As an alternative to the procedures described in subsections (b) and (c), specific courses obtained from nonapproved providers shall qualify as the appropriate number of hours of continuing education as an elective topic under section 7 of this rule as long as the following requirements are met:

(1) The course has been approved by the land surveyor registration board of another state that requires land surveyors to obtain continuing education.

(2) The other state defines an hour of continuing education as at least fifty (50) minutes of instruction time.

(3) The course must cover one (1) or more of the elective topics listed in section 7(1) through 7(14) of this rule.

(4) The course acceptance is not self-study, correspondence, or other unmonitored course where college credit is not awarded for successful completion or where such course was not provided by an accredited college or university as defined in this rule.

(5) The subject matter is not specific to a particular state such as "boundary law of Ohio" or "the Michigan plat act".

(e) The registered land surveyor claiming credit under subsection (d) is responsible for the following:

(1) That the requirements of subsection (d) are met.

(2) For an audit under section 19 of this rule, making available information, such as a course content outline and a course objective, to establish that the requirements

of subsection (d) are met.

(3) Obtaining and retaining for five (5) years from the date of the course, a certification of course completion that substantially complies with 865 IAC 1-14-13.

(f) As it does regarding any other continuing education issue, section 19 of this rule regarding audits of continuing education and the possible imposition of sanctions under IC 25-1-11 apply to continuing education credit claimed under subsection (d). *(State Board of Registration for Land Surveyors; 865 IAC 1-13-5; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1026; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jul 17, 2002, 3:36 p.m.: 25 IR 4111)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 9, 2004 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 12, Indianapolis, Indiana the State Board of Registration for Land Surveyors will hold a public hearing on proposed amendments to revise the continuing education requirements to develop mechanisms to allow for courses sponsored by providers that are approved in another state to qualify for Indiana continuing education credit. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E034 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Professional Licensing Agency

Final Readopted Rules

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

Final Rule
LSA Document #03-102(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

10 IAC 1.5

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

10 IAC 1.5 UNCLAIMED PROPERTY

LSA Document #03-102(F)
Intent to Readopt Rules Published: May 1, 2003; 26 IR 2692
Proposed Readopted Rules Published: July 1, 2003; 26 IR 3425
Hearing Held: July 22, 2003
Filed with Secretary of State: August 14, 2003, 1:15 p.m.

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

Final Rule
LSA Document #03-55(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

830 IAC 1-2-1	**830 IAC 1-2-5**
830 IAC 1-2-2	**830 IAC 1-3**
830 IAC 1-2-3	**830 IAC 1-4**
830 IAC 1-2-4	**830 IAC 1-5**

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

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

LSA Document #03-55(F)
Intent to Readopt Rules Published: April 1, 2003; 26 IR 2470
Proposed Readopted Rules Published: August 1, 2003; 26 IR 3755
Hearing Held: September 23, 2003
Filed with Secretary of State: October 31, 2003, 3:45 p.m.

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

Final Rule
LSA Document #03-77(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

888 IAC 1.1-10-1	**888 IAC 1.1-10-3**
888 IAC 1.1-10-2	**888 IAC 1.1-10-4**

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

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

LSA Document #03-77(F)
Intent to Readopt Rules Published: April 1, 2003; 26 IR 2471
Proposed Readopted Rules Published: June 1, 2003; 26 IR 3148
Hearing Held: August 27, 2003
Filed with Secretary of State: October 31, 2003, 3:45 p.m.

NOTICE OF DISAPPROVAL

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS
LSA Document #02-328

June 26, 2003

John Steinmetz
State Geologist
Indiana Geological Survey
611 North Walnut Grove
Bloomington, IN. 47405-2208

Dear John,

Please be advised that pursuant to I.C. 4-22-2-32(c)(2), and I.C. 4-22-224(d), the Office of Attorney General cannot approve your rulemaking at this time. The Office has determined that the public hearing notices for LSA Document number 328 *[#02-328]* were inadequate in both the Indianapolis Star and the Indiana Register, as they did not properly reflect the date and time at which the public hearing was held.

Please be advised that our office will assist you in complying with the rulemaking chapter in order to have your proposed rules published and in effect. Should you have any questions, please do not hesitate to contact me.

Very Truly Yours,

Tracy L. Richardson
Deputy Attorney General

Cc: John Hill, Associate Director
Amanda Wilson, Licensing Coordinator

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
#03-195(APCB)

DEVELOPMENT OF AMENDMENTS TO 326 IAC 6-1-13 AND 326 IAC 7-4-3 CONCERNING DELETION OF REFERENCES TO DECOMMISSIONED BOILERS AND THEIR CORRESPONDING PARTICULATE MATTER AND SULFUR DIOXIDE EMISSION LIMITATIONS AT PFIZER INC., VIGO COUNTY

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 6-1-13 and 326 IAC 7-4-3 concerning deletion of references to decommissioned boilers and their corresponding particulate matter and sulfur dioxide emission limitations at Pfizer Inc., in Vigo County. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: August 1, 2003, Indiana Register (26 IR 3757).

CITATIONS AFFECTED: 326 IAC 6-1-13; 326 IAC 7-4-3.

AUTHORITY: IC 13-14-8; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Pfizer Inc. (Pfizer), located in Terre Haute, Vigo County, has requested that all references to boilers 5, 6, 7, and D be removed from 326 IAC 6-1-13 and 326 IAC 7-4-3(11), as applicable. Boilers 5, 6, and 7 have been replaced with newer boilers that are subject to new source performance standards at 326 IAC 12. Current boilers have been permitted pursuant to 326 IAC 6-1-2, particulate matter emissions and shall not exceed 0.15 pounds per million BTU for all liquid fuel-fired steam generators and under 326 IAC 7-1.1-2, sulfur dioxide emissions from combustion of fuel oil shall not exceed 0.5 pounds per million BTU. These limitations correspond to the applicable new source performance standard for each pollutant and are no longer required to be listed separately in the amended rule sections affected by this rulemaking.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. Federal law requires sources to be subject to new source performance standards at 40 CFR 60.40c Subpart Dc, 40 CFR 60.42c, and 40 CFR 60.43c. These federal requirements are incorporated into 326 IAC 6-1-2, 326 IAC 7-1.1-2, and 326 IAC 12. This draft rulemaking proposes no changes to these rule sections.

Potential Fiscal Impact

None. Pfizer has already decommissioned Boilers 5, 6, and 7 and taken Boiler D out of service. This rulemaking only removes references to those boilers in 326 IAC 6-1-13 and 326 IAC 7-4-3(11), therefore there is no fiscal impact.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is necessary, please contact Suzanne Whitmer, Rules Section, Office of Air Quality at (317) 232-8229 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from August 1, 2003, through September 1, 2003, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#03-195(APCB)Pfizer
Suzanne Whitmer
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, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 4, 2004.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 6-1-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-1-13 Vigo County
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12; IC 13-14-4-3; IC 13-16-1

Sec. 13. In addition to the emission limitations contained in section 2 of this rule, the following limitations apply to sources in Vigo County:

VIGO COUNTY

Source	East Km	North Km	Process	Emission Limits tons/yr+	lbs/million BTU	other units
Alcan	466.23	4376.07	No. 2 Melter	49.3		3 lb/ton
	466.23	4376.06	No. 3 Melter	49.3		3 lb/ton
	466.23	4376.05	No. 4 Melter	49.3		3 lb/ton

	466.23	4376.04	No. 5 Melter	144.5		3 lb/ton
	466.23	4376.03	No. 6 Melter	144.5		3 lb/ton
	466.23	4376.09	No. 7 Melter	184.0		3 lb/ton
Terre Haute Grain	465.89	4365.42	Unloading	45.9		Good housekeeping as defined by 326 IAC 6-1 and the board or its designated agent.
	465.87	4365.40	Loading	22.9		
	465.85	4365.39	Bin Unloading	76.1		
	465.89	4365.37	Drying	10.1		
Gartland Foundry	464.54	4365.81	Cupola	112.5		.15 gr/dscf
Colombian Home Products	455.36	4370.89	No. 1 & 2 Boilers (1 stack)	69.0	.35	
Graham Grain	464.21	4365.73	Drying	1.7		Good housekeeping as defined by 326 IAC 6-1 and the board or its designated agent.
	464.21	4365.81	Handling	16.0		
Indiana Gas & Chemical	465.88	4366.27	4 Boilers	61.6	.15	
	465.92	4366.30	Coal Unloading	38.6		Comply with 326 IAC 11-3
	465.91	4366.24	Quenching	86.9		Comply with 326 IAC 11-3
	465.91	4366.32	No. 1 Charging & Coking	77.2		Comply with 326 IAC 11-3
	465.91	4366.32	No. 4 Pushing	2.2		.04 lb/ton of coke
	465.89	4366.35	No. 1 Underfire Stack	7.0		.03 gr/dscf
	465.91	4366.29	No. 2 Charging & Coking	77.2		Comply with 326 IAC 11-3
	465.91	4366.29	No. 2 Pushing	2.2		.04 lb/ton of coke
	465.91	4366.27	No. 2 Underfire Stack	7.0		.03 gr/dscf
ISU	465.03	4369.14	No. 2 & 3 Boilers (1 stack)	207.5	.35	Boilers 2 & 3 will not be used simultaneously with Boiler 5.
	465.03	4369.14	No. 5 Boiler (1 stack)	232.4	.35	
	465.04	4369.13	No. 4 Boiler	57.5	.15	
J.I. Case	466.32	4375.13	No. 1 & 2 Boilers (1 stack)	308.3	.68	
Martin Marietta	459.30	4360.60	Gravel Pit	86.7		Comply with 326 IAC 6-4 and good housekeeping as defined in 326 IAC 6-1 and by the board or its designated agent.
~~Pfizer~~	~~464.06~~	~~4356.54~~	~~No. 6 & 7 Boilers~~	~~92.0~~	~~.15~~	
	~~464.06~~	~~4356.57~~	~~No. 5 Boiler~~	~~57.2~~	~~.15~~	
	~~464.65~~	~~4356.39~~	~~D Boiler~~	~~7.9~~	~~.15~~	
PSI	463.58	4375.20	Units 1-6	4102.3	0.1338	
Rose Hulman	472.19	4370.38	No. 1 Boiler	49.3	.6	
Sisters of Providence	460.48	4373.41	No. 2 & 3 Boilers	89.9		20.52 lb/hr
	460.50	4373.42	No. 5, 7 & 8 Boilers	106.2		24.24 lb/hr
Terre Haute Concrete	465.44	4368.96	Batch Plant No. 1	52.5		Comply with 326 IAC 6-4 and good housekeeping procedures as defined by the board or its designated agent.
	465.44	4368.98	Batch Plant No. 2	48.3		
Terre Haute Malleable	4660.50	4371.32	Exhaust Fans	3.8		.15 gr/dscf
United States	461.15	4363.13	No. 1 Boiler	41.1	.15	
Penitentiary	461.15	4363.12	No. 2 Boiler	41.1	.15	
	461.15	4363.11	No. 3 Boiler	41.1	.15	
	462.43	4363.63	Camp Boiler	20.5	.15	
Ulrich Chemical	466.13	4365.39	Soda Ash Handling	4.5		.03 gr/dscf
Wabash Fibre Box	466.57	4370.89	Boiler	16.4	.15	
	466.54	4371.01	Reserve Boiler	55.2	.6	

Wabash Valley Asphalt	468.38	4374.20	North Plant	194.7		Comply with 326 IAC 6-4
	459.30	4360.60	South Plant	315.6		Comply with 326 IAC 6-4
International Paper	463.42	4365.58	No. 1 & 4 Boilers	483.8	.35	
	463.71	4366.00	No. 5 Boiler	61.2	.15	
	463.65	4665.57	Reclaim Furnace	311.0		71 lb/hr

+Compliance shall be acceptable if within 5% of the established emission limit.

(Air Pollution Control Board; 326 IAC 6-1-13; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2480; filed Nov 8, 2001, 2:02 p.m.: 25 IR 754)

SECTION 2. 326 IAC 7-4-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 7-4-3 Vigo County sulfur dioxide emission limitations

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12; IC 13-14-4-3; IC 13-16-1

Sec. 3. The following sources and facilities located in Vigo County shall comply with the sulfur dioxide emission limitations in pounds per million Btu, unless otherwise specified, and other requirements:

Source	Facility Description	Emission Limitations
(1) Alcan Rolled Products Co.	Sol Oil Boiler	0.51
	Foil Mill Boiler	0.51
	Oil Farm Boiler	0.51
	#2 Melter	1.60
	#3 Melter	1.60
	#4 Melter	1.60
	#5 Melter	1.60
	#6 Melter	1.60
	#7 Melter	1.60
	#53 Annealing Furnaces	1.60
(2) Bemis	Boiler	0.51
(3) CBS	#1 WH CB200-200	0.51
	#2 WH CB200-200	0.51
	#1 HC CB293-100	0.51
	#2 HC CB M & W 4000	0.51
	#3 HC CB M & W 4000	0.51
	#1 BP Springfield	0.51
(4) CF Industries	Process Murray Boiler 1	0.52
	Process Murray Boilers 2 and 3	0.52
(5) Digital Audio Disc	#1 Kewanee Boiler	0.36
	#2 Kewanee Boiler	0.36
(6) Doxsee Foods Corp.	Boiler	2.62
(7) General Housewares	Boiler 1A Ladd	6.00
	Boiler 2A Combustion Eng.	6.00
	#5 Enamel Furnace Radiant Tube	0.51
	#6 Enamel Furnace Muffle	0.51
(8) Hercules, Inc.	Murray Iron Works Boiler A	0.51
	Murray Iron Works Boiler B	0.51
	Clayton Boiler (Standby)	0.51
	Nebraska Boiler	0.51
(9) Indiana State University	#2 Voight Boiler	5.64
	#3 Voight Boiler	5.64
	#5 B & W Boiler	5.64
	#4 Murray Boiler	0.37
(10) J.I. Case	No. 1 Riley Boiler	4.74
	No. 2 Riley Boiler	4.74

(11) Pfizer	Boiler 8	3.01
	~~Boiler 5~~	~~2.12~~
	~~Boiler 6~~	~~2.12~~
	~~Boiler 7~~	~~2.12~~
	Animal Health Boiler	1.55

~~Boiler load on Boiler 5, Boiler 6, or Boiler 7 is restricted to 55.84 million Btu per hour if Boiler 8 is also in operation. Pfizer shall maintain records which contain the actual boiler heat input, based on the average fuel heat content and on the quantity of fuel burned hourly, for any hour in which Boiler 5, Boiler 6, or Boiler 7 is in simultaneous operation with Boiler 8. The records shall be made available to the department or the Vigo County Air Pollution Control Department upon request.~~

(12) Pillsbury (Terre Haute)	Boiler B	0.36
	Boiler C	2.62
	Boiler D	0.36
(13) Pitman-Moore	#9, #10, and #15 Boilers	4.58
	#16 Boiler	0.36
	East Plant Boiler	0.36
(14) Public Service Indiana Wabash River	Boilers 1, 2, 3, 4, 5, and 6	4.04
(15) Rose-Hulman	#1 Voight Boiler	2.26
	#2 Cleaver Brooks Boiler	0.51
	#4 Cleaver Brooks Boiler	0.51
(16) St. Mary's Sisters of Providence	#2 Voight Boiler	3.84
	#3 B & N Boiler	3.84
	#5 B & N Boiler	3.84
	#7 Voight Boiler	3.84
	#8 Voight Boiler	3.84
(17) Snacktime Company	#1 Boiler	0.52
	#12 Boiler	0.52
	#2, #3, #4, and #6 Fryer Oil Heaters	0.52
(18) Terre Haute Coke and Carbon	2 CB Boilers	1.79
	2 Standby Boilers	4.55
	No. 1 CB Underfire Stack	0.63
	No. 2 CB Underfire Stack	0.63
(19) Terre Haute Regional Hospital	#1 Boiler	0.45
	(New) #2 Boiler	0.45
(20) Union Hospital Energy Co.	2 Keeler Boilers	0.36
	3 Cleaver Brooks Boilers	0.36
(21) U.S. Penitentiary	#1, #2, and #3 Boilers	0.51
	2 Honor Farm Boilers	0.51
(22) Wabash Fibre Box	Cleaver Brooks Boiler	2.36
(23) Wabash Products Co.	Boiler	natural gas only
(24) Western Tar	Tar Division, Boiler A	0.36
	Tar Division, Boiler B	0.36
	Wood Division, Boiler A	0.36
	Wood Division, Boiler B	0.36
	Tar Division, Process Still	0.36
(25) Weston Paper	B-1 and B-4 Boilers	4.09
	B-5 Warehouse Boiler	2.62

(Air Pollution Control Board; 326 IAC 7-4-3; filed Aug 28, 1990, 4:50 p.m.: 14 IR 70; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on March 3, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 6-1-13 and 326 IAC 7-4-3.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed 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 (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 Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana, and are open for public inspection.

TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

SECOND NOTICE OF COMMENT PERIOD
#02-204(FAB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE UNDERGROUND STORAGE TANK LIABILITY TRUST FUND

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 328 IAC 1 concerning clarifications of the rules governing the excess liability trust fund. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 328 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: August 1, 2002, Indiana Register (25 IR 3906).

Continuation of First Notice of Comment Period: February 1, 2003, Indiana Register (26 IR 1744).

CITATIONS AFFECTED: 328 IAC 1.

AUTHORITY: IC 13-23-8-1; IC 13-23-8-4; IC 13-23-8-5; IC 13-23-11-7.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Amendments are being proposed to the Excess Liability Trust Fund (ELTF) rule that would provide for additional cost accountability by claimants to the fund to ensure that the ELTF is reimbursing costs only for cost effective and reasonable remediation of releases of regulated substances and closure of tanks. The ELTF is used by owners and operators of underground storage tanks to show financial assurance under state and federal law. The ELTF has been drawn down in the past several years and may be reduced to $25 (twenty-five) million dollars within the next year. Reduction of the ELTF to this amount could endanger the solvency of the fund that in turn creates two problems: continuing payment of claims, and maintaining the ELTF as a financial assurance mechanism for owners and operators. It is a state and federal requirement that owners and operators show one million dollars in financial responsibility if an owner has 1-100 tanks and to show two million dollars in financial responsibility if an owner has more than 100 tanks. There are other amendments in the rulemaking that are proposed to maintain the ELTF. The method for prioritization of claims in the event of a fund balance near or at $25 (twenty-five) million dollars is proposed to be amended so that claims associated with releases that pose an immediate and significant threat to the environment are given priority in payment. The definition of "third party liability" is clarified.

The schedule of specific costs allowed to be reimbursed has also been revised and updated.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

The Indiana Underground Storage Tank (UST) Program is currently pending federal authorization. The rules of the Indiana and Federal UST program include requirements for financial responsibility and financial assurance for UST systems. The Excess Liability Trust Fund (ELTF) is a financial assurance mechanism under the Indiana UST rule at 329 IAC 9. The ELTF is evaluated for viability as a financial assurance mechanism as part of the evaluation for authorization of the UST program. No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not prescribed under federal law. See IC 13-23-1-2(c)(6) and IC 13-23-4-1(6).

Potential Fiscal Impact

This rule will not impose any requirements that cause the regulated community a fiscal impact of more than $500,000.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a cross-section of stakeholders. The stakeholders consist of consultants, associations representing underground storage tank owners and operators, various contractors performing remediation, and owners and operators of underground storage tanks. Meetings were held on July, 8, 2003, July, 29, 2003, August 19, 2003, September 9, 2003, September 30, 2003, October 20, 2003, and November 5, 2003, to discuss issues proposed in the First Notice and the Continuation of the First Notice, related issues, and various ways of resolving those issues. Additional meetings may be held after the second notice is published. If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Lynn West, Rules, Outreach and Planning Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana) or by e-mail at lwest@dem.state.in.us. Please provide your name, phone number and email address, if applicable, where you can be contacted. The public is also encouraged to submit comments and

questions to members of the workgroup who represent their particular interests in the rulemaking.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from August 1, 2002, through September 6, 2002, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

C. Michael Pitts, Executive Director, Indiana Petroleum Marketers and Convenience Store Association, (IPCA)

Patrick M. Gorman, Facilitator, Indiana Steel Environmental Group, (ISEG)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The notice states that the risk integrated system of closure (RISC) guidance is now effective and the RISC provisions are being added to the underground storage tank (UST) rules. This notice proposes to revise the rules for the liability trust fund to expedite payment to eligible parties required to use RISC for tank closures. The IPCA questions the accuracy of the above statements. RISC is a non-rule policy statement that allows the use of a variety of clean-up procedures. No one is required to use RISC. While IDEM did propose in the June 1 Indiana Register to revise the UST regulations to add references to RISC, this proposal has not received any public discussion and has not been adopted by the Solid Waste Management Board. An August 28, 2002 letter from LUST Section Chief Craig Schroer indicates that nearly 3,800 active sites may still use the 1994 UST Guidance Manual. If references to RISC are included in the ELTF rules, it is important to clarify that the use of RISC is an option for remediation, not a requirement. (ISEG) (IPCA)

Response: IDEM expanded the costs listed under 328 IAC 1-3-5 to include additional analytical costs that can be reimbursed when an owner or operator uses RISC for corrective action or closure. Otherwise the draft rule does not require the use of any one remediation option.

SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF THE FIRST COMMENT PERIOD

IDEM requested public comment from February 1, 2003, through March 5, 2003, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

David B. Steiger, Engineering and Fire Investigations, (EFI)

Catherine Gibbs, Lee and Ryan, (L&R)

Fred W. Nichols, Steven B Wilcox, Astbury Environmental Engineering, Inc., (AEEI)

Christopher J. Braun, Indiana Petroleum Marketers and Convenience Store Association, (IPCA)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: I am please to provide comments regarding the development of amendments to rules concerning the Underground Storage Tank Liability Trust Fund. I have several comments regarding, Item (4) on the submission of corrective action plan (CAP) budgets for approval prior to implementation of the CAP. The CAP approval process currently can take several months, especially if IDEM rejects the initially proposed CAP or if amendments are required. A final budget cannot be developed until the CAP is approved, especially if subcontractor bids, based on the approved scope or system, are required. The owner/operator may not realize reimbursement is available until after a CAP is implemented. Would failure to submit the CAP budget for pre-approval make all CAP implementation costs ineligible? The workload on the technical review staff is currently so high as to result in significant delays in the progress of projects. Adding budget approval to the responsibilities of the review staff could further delay the review and approval of all aspects of remediation projects. There is often a need to make last minute changes to a budget due to unanticipated site conditions. Would such "change orders" also require pre-approval, further delaying progress? Budgets for long-term remediation projects, such as O & M costs, are usually proposed on an annual basis. Would approval of annual O&M budgets be required as well? Finally, some of the allowable rates published in the ELFT rule are below the rates a consultant may need to charge the client to cover costs, such as mileage, per diem, or certain rental and subcontractor costs. The client is aware that such costs may not be fully reimbursed. Would IDEM, reject a CAP budget that contains such costs? Would IDEM approval of such a budget indicate approval, and therefore reimbursability of such costs? If not, I see little reason for IDEM to delay the progress of a CAP and potentially interfere with the financial relationship between the consultant and the client for the sake of a non-binding budget review. (EFI)

Response: Projected costs will be utilized by the department as shown in the draft rule. (328 IAC 1-3-3.1; 328 IAC 1-3-5(b)(13)) Minor changes in the corrective action will not require a new set of projected costs. The submission of projected costs will be a tool for IDEM to expedite the reimbursement of claims.

Comment: In summary, I foresee several difficulties with regard to pre-approval of CAP budgets. Although the control of CAP implementation costs, thereby extending the life of the Fund, is a worthy goal, I do not believe that adding this step to IDEM's oversight activities will go very far toward that goal. Unlike the situation in some states with a budget review process, Indiana has published extensive lists of eligible and ineligible expenses and allowable unit rates, which are reviewed during the claim process. It does not appear that pre-approval would add much to the cost-control efforts. Implementation of random audits, or audits targeted at inconsistent or irregular claims, may be a more efficient method of deterring abuse of the fund. (EFI)

Response: The requirement of demonstrating cost effectiveness under 328 IAC 1-3-1.3, and the requirement that reimbursable costs be reasonable, will aid in deterring use of the fund for unnecessary costs.

Comment: (1) Additional information to justify an expense may be requested by the Commissioner before payment is made. COMMENT: As Lee & Ryan believes that the Indiana Department of Environmental Management (IDEM) has this authority now, this seems to be an unnecessary change. (L&R)

Response: This change was made to clearly state that authority in the rule.

Comment: (4) Submission to the commissioner for approval of *the budget* for the corrective action plan (CAP) prior to the implementation of any clean-up activities at the sites for which a claim for reimbursement would be submitted to the department. COMMENT: Lee & Ryan *is* concerned that this will further delay the remediation process by adding new requirements not contemplated by the legislature. Lee & Ryan's opposition to this change will largely depend upon the specific language proposed by IDEM. (L&R)

Response: The submission of projected costs will not delay reimbursement but help to expedite the reimbursement of claims. The claimant should be aware of which costs may be reimbursed and the amount under 328 IAC 1-3-5. The legislature granted IDEM the authority to develop criteria to determine the cost effectiveness of corrective action under IC 13-23-9-2.

Comment: (5) Clarification that eligible reimbursable costs include only reasonable labor and project costs. COMMENT: Unless IDEM intends to specify exactly what it considers to be "reasonable labor and project costs", Lee & Ryan does not see the necessity for such a clarification as the statutes, under which the Excess Liability Trust Fund (ELFT) functions currently, provide this authority. Any modification that leaves the definition of "reasonable" to the discretion of individual Project Managers is unacceptable and does not provide the certainty that the regulated community must have in order to maintain compliance with the rules. (L&R)

Response: The department has defined the term "reasonable" in the draft rule. The term is used in the statute at IC 13-23-9-2(b)(2) and (c) in that the administrator makes a determination that the work or part of the work that has been performed is reasonable and cost effective. This determination is made before the administrator may approve payment of a claim.

Comment: (6) That the commissioner or representatives of the commissioner may request and audit, under appropriate provisions for confidentiality, the financial records of persons employed by or are under contract to the owner or operator and that pertain to the corrective action of a site prior to payment of a claim. COMMENT: The financial records of any company are highly confidential and any attempt by the State to acquire this information can only be justified upon a showing of overwhelming State interests. Even the promise of confidentiality is not sufficient to alleviate the concerns most companies would have regarding such a provision. Lee & Ryan opposes any attempt by IDEM to seek the confidential financial records of companies simply because that company may perform ELFT work. Such a requirement would not afford the company its due process rights. If IDEM wishes to review such information, it has other ways to obtain such information. (L&R)

Response: There is no provision in the draft rule that would allow IDEM to audit financial records, however, the applicant must submit information to justify costs. IDEM will only seek information necessary to justify payment of claims.

Comment: (7) In addition to the person applying to the fund for reimbursement, the owner and operator must sign the statement under 328 IAC 1 -5-1 (b) on the claim application. COMMENT: It is unclear what IDEM hopes to achieve with this requirement except to further delay the claims process. (L&R)

Response: IDEM has no interest in delaying the claim process. The change will help reduce incorrect or incomplete claims by the person applying for payment by requiring both the owner/operator and the assignee to stand behind the claim submitted. Ultimately, it is the owner/operator's responsibility for conducting corrective action connected to the release, not the assignee.

Comment: (8) Clarification that the approval of the initial site characterization and the corrective action plan, under 329 IAC 9, does not necessarily mean that costs incurred are reasonable and eligible for payment under 328 IAC 1. COMMENT: Lee & Ryan believes that such a rule would be contrary to the statutory authority under which the ELFT operates. (L&R)

Response: IDEM disagrees. The legislature granted IDEM the authority to develop criteria to determine the cost effectiveness of corrective action under IC 13-23-9-2. The administrator has the authority to determine that work performed is reasonable and cost effective, also under IC 13-23-9-2.

Comment: It appears as if one of the objectives of the proposed changes is to prevent consultants and contractors from making a profit through ELFT work. IDEM currently controls labor rates and most expenses associated with ELFT work. Consultants and contractors must be able to operate at a profit if IDEM expects any to continue to do such work. (L&R)

Response: It is not IDEM's intention to prevent consultants or contractors from making a profit. IDEM believes that the revision will still allow consultants and contractors to make a profit while ensuring that expenses are cost effective and reasonable to ensure solvency of the excess liability trust fund. IDEM has taken significant steps to provide an opportunity for comments from interested parties to discuss the potential impact of all the proposed changes.

Comment: Lee & Ryan believes that this rulemaking effort should include a review of the costs under 328 IAC 1-3-5, Reimbursable Expenditures, to ensure that these rules reflect current costs associated with corrective action. Thank you for your consideration of these comments. (L&R)

Response: A Cost Sub-workgroup was formed as part of this rulemaking process. The sub-workgroup is examining all the costs to make sure that the costs reflect the true costs of site investigation and corrective action. The draft rule reflects the work of this sub-workgroup to date. Some costs have been raised and some lowered based on input from the group.

Comment:(1) Additional information to justify an expense may be requested by the commissioner before payment is made: What kind of "information" does this refer to? How would this affect the time-frame for claim processing? Would the claim stay in the system while additional information is being gathered and submitted, or would the claim start all over like a re-submittal? Does "commissioner" mean Navigant, ELFT, or who? This proposed amendment may not be necessary or appropriate given the current and proposed structure of the ELFT Rules. (AEEI)

Response: To effectively administer the fund, IDEM must have sufficient information to justify payment of the claim. The specific additional information requested depends on the nature of the claim. If the additional information is minor, the claim would be continue to be processed. If major deficiencies are noted, the claim would be denied. "Commissioner" has been changed to "administrator" of the fund. The "administrator" is the commissioner of the department or her agents.

Comment: (2) Definitions may be added or be revised for "third party", "calendar year" or "fiscal year". No comments. (AEEI)

Response: The revision of the definition of "third party liability" was requested by the Indiana Attorney General. A change was made at 328 IAC 1-1-10 to clarify the definition.

Comment: (3) Revisions to 328 IAC 1-3-3 to specify how the penalties would be calculated and perhaps allow flexibility in adjusting the penalties for specific situations. Need to see more to comment. (AEEI)

Response: Tables and a formula were put into the rule to clarify the calculations of the penalties.

Comment: (4) Submission to the commissioner for approval of the budget for the corrective action plan (CAP) prior to the implementation of any clean-up activities at the site for which a claim for reimbursement would be submitted to the department. Not withstanding any immediate remedial activities necessary to protect human health and the environment. This amendment may be better stated; "Submission to the commissioner for approval of the corrective action plan (CAP), including the budgetary figures to complete the CAP". It is our opinion that it may be beneficial to adopt policies that require much more specific remediation technology evaluation and cost benefit analysis by the consultants. The CAP Report would have to include very specific remediation system performance criteria and equipment specifications and include budgetary cost estimates (more detail than is now required) for the technologies considered. More specific costs would be required for the implementation of the selected remedial approach including, for example - in the case of a MPE system installation, estimates would be

provided in the CAP for the three (3) primary phases for implementation, remediation system/equipment, MPE recovery well installation, and remediation system installation. Copies of subcontractor/vendor bids (minimum of 3 for each phase) would be submitted as an appendix to the CAP - similar to the way claims are submitted now for remediation costs already incurred. Submitting this information up-front in the CAP would allow IDEM and Navigant personnel to better evaluate the proposed remedial approach and prevent potential financial abuses to the Fund. It is important that the projected costs be looked at as budgetary estimates - there needs to be flexibility with respect to actual costs incurred and changes orders - so long as the specifications are followed and the approach, vendors, and subcontractors are pre-approved. The primary purpose of the budgetary estimates would be to ensure that the engineers have done their homework, evaluated and bid primary associated remediation vendor and subcontractor costs, provided a cost-effective solution to the incident, and that there is a general technology specification, work plan, and budget for which they can be held accountable. It is also important that the parties involved are not handcuffed by the IDEM or Navigant during CAP implementation. There are Frequently changes to the CAP project that require adjustments in the equipment fabrication, well installation, well-head construction, piping layout, site restoration, electrical connection, etc,, so it will be imperative that the IDEM have some flexibility with respect to these costs - so long as the appropriate supporting change order information or justification is provided. An efficient means of oversight and IDEM involvement needs to be put in place so these projects can be efficiently completed. This approach will require more engineering time and cost during the planning/design and CAP preparation phase In the long run, however, the costs to the Fund should be reduced by requiring better planning, greater accountability, better engineered remedial plans (and quicker cleanup), etc. Furthermore., these changes would improve the claim review process, which currently can involve excessive individual interpretation and opinion-based decision making. Owners/operators and consulting engineers are concerned in some instances that the personnel reviewing the technical aspects of the LUST/ELFT projects are not sufficiently trained or experienced. This can result in inefficiencies that ultimately cost the Fund more due to unnecessary and time-consuming technical correspondence. It is important that the agency have the resources needed to properly evaluate pilot test data, ensure that the proposed system correlates with the pilot test data, geology/hydrogeology, contaminant mass, and extent of the contaminant plume. (AEEI)

Response: IDEM agrees with the more specific evaluation proposed in this comment and has made changes to the draft rule accordingly. IDEM has adopted a remedy evaluation process in 328 IAC 1-3-1.3 including a requirement for project costs to be submitted.

Comment: (5) Documentation and reporting, of any credits, rebates, refunds or other similar payments given to the owner or operator regarding the corrective action at a site. No comments. (AEEI)

Response: The draft rule requires documentation and reporting of any credits, rebates or refunds given to the owner or operator. Those amounts should not be, and will not be eligible for reimbursement.

Comment: (6) Clarification that eligible reimbursable costs include only reasonable labor and project costs. This is a valid concept, but how will "reasonable" be defined and by whom. The key to ensuring reasonable costs may lie in the concepts presented in the comments related to Item #4. (AEEI)

Response: "Reasonable" has been defined in the draft rule at 328 IAC 1-1-8.3 and "cost effective" is described in 328 IAC 1-3-1.3. Reimbursable costs must be reasonable and cost effective.

Comment: (7) That the commissioner or representatives of the commissioner may request and audit, under appropriate provisions for confidentiality, the financial records of persons employed by or are under contract to the owner or operator and that pertain to the corrective action of a site prior to payment of a claim. How will the audit process potentially affect the claim turnaround time-frame? What criteria are to be used to select when/where/who the audit will be done? (AEEI)

Response: There is no provision in the draft rule that would allow IDEM to audit financial records, however, the applicant must submit information to justify costs. (See 328 IAC 1-5-1.) IDEM will only seek information necessary to justify payment of claims.

Comment: (8) In addition to the person applying to the fund for reimbursement, the owner and operator must sign the statement under 328 IAC 1-5-1 (b) on the claim application. No comments. (AEEI)

Response: The department thanks you for considering the validity of this change.

Comment: (9) Clarification that the approval of the initial site characterization and the corrective action plan, under 329 IAC 9, does not necessarily mean that costs incurred are reasonable and eligible for payment under 328 IAC I. If an approved ISC and CAP are implemented in accordance with the cost guidelines and procedures established in the ELFT Rules, then there should be no basis for deeming these costs to be unreasonable. Any such judgement must be based on fact rather than opinion, thereby making it essential that all parties adhere strictly to the established rules and guidelines. The existing ELFT cost guidelines for site investigation expenses, and proposed amendments discussed in ITEM#4 should make the amendment discussed above in Item #9 unnecessary. (AEEI)

Response: IDEM has included language in the draft rule for a cost effectiveness analysis of corrective action. This is appropriate under IC 13-23-9-2.

Comment: (10) Revision that would allow access to the ELFT for a successor owner or operator for corrective action costs due to a prior owner or operator's release. No comments. (AEEI)

Response: The department thanks you for considering the validity of this change.

Comment: (11) Other issues that need to be addressed amending the rule in conformance with IC 13-23 or to clarify the rule or to clarify the intent of the rule. No comments. (AEEI)

Response: The department thanks you for considering the validity of this change.

Comment: Regarding the section titled Statutory and Regulatory Requirements, AEE's comments are as follows: Regarding the seven (7) items listed by the IDEM in this section, AEE sees a significant need for clarification of these concepts and the applicability to the ELFT program before more feedback can be given. Some of the wording and concepts appear to be somewhat vague for example: "Economic reasonableness of measuring or reducing any particular type of pollution". (AEEI)

Response: These seven items are required by statute to be included in any environmental rulemaking notice. These standards are really designed for analysis of environmental rulemaking and so may not specifically address the issues in this rulemaking.

Comment: It is important that the remedial approach of soil excavation and disposal be officially recognized as an approved technology if this approach is deemed appropriate by the IDEM and the approved as part of the CAP. It is AEE's position that soil excavation/disposal is an "approved technology " and is recognized as such by our industry. If, after evaluation of all potentially feasible remedial options, excavation/disposal is deemed most cost-effective and is approved by ELFT, all associated costs with implementing this technology should be eligible for reimbursement in accordance with 328 IAC 1 3-5 (just as an in-situ technology would be). (AEEI)

Response: Soil excavation and disposal is an approved technology that has unit rates, therefore bids are not required or necessary. See 328 IAC 1-3-5. IDEM has formed a cost sub-workgroup to examine and suggest appropriate changes to the unit rates.

Comment: In accordance with 328 IAC 1-3-5 (Reimbursable Expenditures - Approved Technologies),
if the lowest qualified bid from a minimum of three (3) bidders is selected for the CAP implementation work, these costs should be reimbursed at cost +15%. Oftentimes, this has not been the case and ELFT/Navigant personnel have denied costs based upon unit rates. If the costs associated with this technology are reimbursed based only upon the unit rates, the selection of this technology becomes prohibitive for the responsible party because even under a competitive bid scenario and selection of the lowest qualified bidder, the responsible party will not receive adequate reimbursement (because the unit rates are too low). This could force the selection of a more expensive remediation option for which they could receive full reimbursement but would cost the Fund significantly more money The cleanup may also take longer to complete corrective action goals. Under the current policy of denying costs for soil excavation and disposal, the responsible parties will be forced to lean much harder toward more expensive in-situ technologies to ensure a higher reimbursement percentage. Obviously, this is not desirable for anyone involved because it will cost the Fund significantly more. (AEEI)

Response: IDEM disagrees. Costs for soil excavation and disposal may be reimbursed. Soil excavation and disposal is an approved technology that has unit rates, therefore bids are not required or necessary. IDEM has formed a cost sub-workgroup to examine and suggest appropriate changes to the unit rates.

Comment: Again, it is our opinion that all costs associated with implementation of an IDEM-approved CAP or CAP Addendum should be reimbursed if the lowest qualified bid is selected for an "approved technology". (AEEI)

Response: IDEM disagrees. For instance, costs for soil excavation and disposal may be reimbursed. Soil excavation and disposal is an approved technology that has unit rates, therefore bids are not required or necessary. IDEM has formed a cost sub-workgroup to examine and suggest appropriate changes to the unit rates.

Comment: Interim Remedial Action--It has always been quite prohibitive for an owner/operator to conduct interim remedial action (IRA) activities at a LUST site with respect to feedback, support, and ELFT reimbursement from the IDEM. Oftentimes, it is imperative that remedial action be implemented immediately (prior to CAP approval) to mitigate and control a dissolved-phase contaminant plume due to extremely high contaminant levels and/or expansion of the contaminant plume. By conducting IRA operations, the extent of contamination and longer term costs and the potential for off-site impacts can be reduced. Despite the clear-cut benefits of this step, neither IDEM nor Navigant personnel have been supportive of IRA operations. If an owner/operator does not have the technical or financial support of the agency, the necessary response actions are less likely to be voluntarily undertaken by the responsible party. (AEEI)

Response: The owner/operator may request pre-approval of costs under the draft rule. Pending establishment of eligibility, pre-approval would allow the owner/operator to know the corrective action activities that will be reimbursed.

Comment: Clarify Conflicting Language on Assessment of Penalties for Late UST Fee. Ind. Code 13-23-12-7 provides that a UST owner who fails to pay the fee when due "shall be assessed a penalty of not more than $2,000 per UST per year." This statutory language gives IDEM the discretion to waive all or part of the UST penalty. By comparison, the relevant regulation provides that for an owner who fails to pay the fee when due "the penalty will be calculated at $2,000 per UST." 328 IAC 1-3-3. Thus, there is a conflict between the discretionary and mandatory language of the two laws, which needs to be resolved. The IPCA recommends that the IDEM be given the discretionary authority to assess reasonable penalties, which are more fully addressed in paragraphs 2 and 3 below. (IPCA)

Response: IDEM disagrees that there is a conflict between the rule and the statute. The current and draft rule language on penalties is certainly within the statutory authority granted to assess penalties and is therefore "reasonable". The Financial Assurance Board has chosen not to give the administrator the discretion to waive all or part of the penalty.

Comment: Modify the Timetable for the Assessment of Penalties for Late UST Fees. A UST owner recently reported to the Financial Assurance Board that he was three weeks late in submitting his annual tank payment of $270 for 3 USTs and receive a notice from the Indiana Department of Revenue that he owed a $6,000 penalty for being late. To lessen the harshness of this program, the IPCA recommends that the following changes being adopted: (a) if a UST payment deadline has been missed, the Indiana Department of Revenue will be required to send a follow-up written notice to the UST owner advising him/her that a UST payment has been missed and that a monthly late fee equal to 10% of the unpaid tank fee has been assessed and that failure to pay the UST fee within thirty (30) days of receipt of the late notice will result in an additional 10% penalty. If the payment is more than three months late and the UST owner has received and ignored the reminder notice, the Department of Revenue and IDEM should have the discretion to assess a penalty of up to $2,000 per UST per year. (IPCA)

Response: IDEM generally agrees; the rule has been modified at 328 IAC 1-3-3(f) and (g).

Comment: Annual UST Assessments Should Reflect Any Unpaid Balances from Prior Years. Experience has shown that several years may pass after a missed UST payment. When the UST owner decides to sell his gas station, he discovers for the first time that a UST payment was missed several years ago. The interest and penalties add up rather quickly and are very disruptive to the parties' expectations in the transaction. When a UST payment is missed, there currently is no reminder notice sent by the Department of Revenue to the UST owner. For these reasons, the IPCA recommends that the annual UST assessments include notices of any unpaid UST fees, interest and penalties for prior years. (IPCA)

Response: This comment exceeds the scope of this rulemaking.

Comment: Oppose Unauthorized Raiding of the Trust Fund and Prevent Breach of FAB's Fiduciary Duties to the Trust Fund. In the 2002-2003 fiscal year, the Indiana Budget Agency raided Indiana's Excess Liability Trust Fund by withdrawing $475,422 to satisfy overall state budget shortfalls. In doing so, the Budget Agency relied on Indiana Code 4-12-1-13.5, which dates back to 1977. The Budget Agency representative also testified that the Agency intended to raid the Fund again in the 2003-2004 fiscal year. It is the IPCA's position that the Budget Agency's actions are improper and unlawful and its reliance on this statute is misplaced.

First, the ELTF may only be used for statutorily defined purposes. Ind. Code 13-23-7-1 enumerates the purposes of the ELTF. These purposes include providing money to owners and operators to satisfy liabilities, providing money to third parties to satisfy liabilities, and providing money to administer the fund. IC 13-23-7-1. Furthermore, the statute clearly states that money remaining in ELTF at the end of a year does not revert to the general fund. IC 13-23-7-6. Thus, it is unlawful for the Budget Agency to withdraw money from the Fund and use it for purposes not recognized by the statute or the Indiana Legislature.

Second, a few years ago the Indiana Legislature changed the Fund from simply a general dedicated fund to a dedicated trust fund, thereby providing the FAB and the ELTF greater protection and imposing on the FAB a higher fiduciary duty to serve as careful stewards of this Fund. This statute was enacted long after the Budget Agency's statute. Hence, it is presumed that the Legislature was fully aware of the budget law when it enacted the trust fund and built in its express purposes for use of funds. By removing money from the ELTF against the mandate of the Legislature, the Budget Director has overstepped his statutory authority and his constitutional role as an executive. The Budget Director is making a determination that belongs only to the legislature, which determination has already been made by the legislature. Article 3, Section I of the Indiana Constitution, the Distribution of Powers Article, prohibits the Budget Director from doing so.

Third, the appropriations statute appears to give the auditor the power to transfer money from "dedicated funds" to the state general fund, once the Budget Director so certifies. See IC 4-12-1-13.5(c). However, a dedicated fund does not include the ELTF, a trust fund. Generally, statutes are to be given their plain and obvious meaning. See North Miami Education Association v. North Miami Community Schools, 746 N.E.2d 380,382 (Ind.Ct. App. 2001). This meaning may not be expanded or contracted. See id. The IPCA was unable to find any statutory or case law authority supporting-the Budget Director's position that the ELTF was a general dedicated fund. Thus, claiming that ELTF falls within the definition of "dedicated fund" has no basis in statute or case law and is an impermissive expansive reading of the appropriations statute.

Fourth, the appropriations statute gives the Budget Director the authority to transfer money away from one agency if that money "is attributable to the operations of other state agencies."

See IC 4-12-1-13.5(a). Pursuant to the fiscal report prepared for ELTF Financial Assurance Board, in 2002, approximately $24.3 million was placed into ELTF coffers from oil inspections and UST tank fees. Another $53,839 was placed in the ELTF coffers from "misc. revenue." Thus, it is not possible that the $475,422 removed by the treasurer is "attributable" to other state agencies. At most, the $53,839 could be attributable to other agencies. (IPCA)

Response: This comment exceeds the scope of this rulemaking.

Comment: IDEM and the ELTF Should Not Be Authorized to Conduct Financial Audits of Companies Conducting Environmental Cleanups of UST Sites. IDEM and the ELTF currently have sufficient authority to carefully review and approve any environmental data submitted by an environmental consultant on behalf of a UST owner, such as the Initial Site Characterization and the Corrective Action Plan. The ELTF currently has sufficient authority to review, approve and/or reject any and all costs and invoices associated with the investigation and remediation of UST sites. For example, if insufficient documentation is provided in support of an expense or if the costs exceed the Reasonable Cost Guidelines these costs are disallowed by the ELTF. It is the IPCA's position that there is no need for either IDEM or the ELTF to be given additional financial audit authority into environmental consultants' business affairs. Moreover, for a variety of reasons, it would be a costly and dangerous precedent to suddenly give the IDEM and ELTF audit authority like the Internal Revenue Service. (IPCA)

Response: IDEM has amended the draft rule under 328 IAC 1-5-1(a) to make clear that the administrator may request additional information to substantiate the payment of claims. The draft rule does not include a requirement for financial audits.

Comment: The IPCA Supports Reasonable, Cost-Effective Investigation and Remediation of UST Sites. To ensure the viability of the Fund for the long term, the IPCA supports cooperative efforts by UST owners, environmental consultants and IDEM personnel to undertake reasonable, cost-effective investigation and remediation of UST sites. This requires a careful and ongoing balancing of competing interests. IDEM has identified the types of cleanup technologies that may be approved and retains oversight authority to ensure that the site investigation and remediation of soil and groundwater, both on-site and off-site, are complete. Within those parameters, the UST owner and his environmental consultant need to have the flexibility to adopt, on a site-by-site basis, a cost-effective investigation and remediation approach that meets the UST owner's needs while complying with the IDEM standards for UST cleanups. While the IPCA does not want to encourage overly expensive and aggressive cleanups which would unnecessarily deplete the ELTF, this does not mean that the cheapest cleanup approach is always the best. In light of the above competing interests, without adding unnecessary layers of paperwork, delay and bureaucracy, the IPCA would be willing to discuss with IDEM and ELTF ways that a proposed estimate of cleanup costs could be prepared in conjunction with the CAP submission.

Any discussion of a system for "costing out" projects, however, should be done in the context of the current system, which includes the following. At the "CAP" stage, any costs provided could only be looked at as 'estimates' since no formal bids are taken at that stage (until CAP approval, it would be a waste of time). Even after CAP approval, consultants usually obtain bids for remedial system installation, and IDEM typically approves the lowest bid. However, in some cases, the lowest bid is not necessarily the best bid, since the contractor who bids may have undercut estimates. There needs to be a mechanism that allows IDEM and the UST owner's consultant to negotiate which bid level is reasonable, to select based on contractor qualifications and the needs of the project, whether the consultant believes that the contractor was 'responsive' in his bid, and whether all items that are critical are included in the bid. Finally, at certain sites, particularly high priority sites where contamination poses a threat to reach critical receptors and related off-site concerns and 'emergency' status is granted, the UST owner and his consultant are required to undertake an expedited response. This usually requires working extended hours at night and on weekends in response to the situation, that some additional allowances be made for rates (including a higher level of senior personnel time to handle these delicate situations) and other considerations such as (1) overtime for more than 40 hours per week (normally that is at least time and a half for hourly employees), and (2) expedited costs (for example analytical costs, or contractor night and weekend rates). (IPCA)

Response: The cost effectiveness analysis language contained in the draft rule makes it clear that cost is only one factor considered in the determination that a corrective action plan (CAP) is cost effective. IDEM is only requesting projected costs for alternative remediation approaches, not a final budget. (See 328 IAC 1-3-1.3)

IDEM does not control the quality or consistency of the bids submitted to the owner/operator. If consistency is lacking the owner/operator may request a revised bid. The current rates take overtime into account. There is also some flexibility in IDEM's payment of subcontractor costs.

Comment: The ELTF Rules Should Be Modified to Ensure that Remediation of Abandoned Gas Station Sites May be Funded by the Petroleum Trust Fund. Abandoned gasoline station sites continue to plague many areas of the State of Indiana. Since the ELTF was created in 1988, 50% of the annual UST fee has been paid into the Petroleum Trust Fund, which currently enjoys a balance of more than $4,200,000. While the Petroleum Trust Fund was created, in part; to address abandoned gas station sites, this aspect of the program has never been fully developed. In its absence, for the past several years an increasing amount of money has annually been used by IDEM for its internal

personal services, contractual services, and program support; while some of these expenses and programs maybe worthwhile, these monies are being spent on abandoned gas station sites (i.e. in 2002 more than $550,000 was spent on these items). Meanwhile there remain a tremendous number of abandoned gas stations around the State that continue to be pose environmental threats to the soil and groundwater supplies of their neighbors, are eyesores to their local communities, and do not contribute to the tax rolls of their communities. The IPCA would like to see rules developed that would encourage buyers of these sites, who have no affiliation with any prior owner of the site, to register the USTs, pay all back fees and interest (no penalties) and become ELTF eligible. This would allow for the acquisition and development of these sites, with environmental threats being removed from the neighborhoods, would generate tax revenues, and would foster the development of new jobs on these sites. (IPCA)

Response: This comment exceeds the scope of this rulemaking.

Comment: The IPCA Supports Allowing Access to the ELTF By A Successor Owner/Operator. The IPCA supports revisions that would allow access to the ELTF for a successor owner or operator for corrective action costs due to a prior owner or operator's release. Similar to current practice, the buyer would have to ensure that the back UST fees, interest and penalties are paid within thirty (30) days of closing, thereby making the buyer 100% ELTF eligible. The innocent buyer should not be penalized and rendered ineligible due to the prior acts and omissions of the former UST owner/operator. (IPCA)

Response: An "innocent buyer" has the opportunity to collect overdue fees, interest, and penalties from the seller or obtain a reduced purchase price. This type of ELTF access is not authorized by the statute, therefore the comment exceeds the scope of this rulemaking.

Comment: The IPCA Supports Allowing Access to the ELTF By a Landlord Who Did Not Own or Operate the UST System. For many of the same reasons, the IPCA supports allowing owners of real estate with USTs, but who do not own or operate the UST system, a similar arrangement whereby the landlord would ensure that the back UST fees, interest and penalties are paid, thereby making the innocent landlord 100% ELTF eligible so the site may be cleaned up. The innocent landlord should not be penalized and rendered ineligible due to the prior acts and omissions of the former UST owner/operator. This approach is similar to a third-party claim that both the Indiana Attorney General and IDEM had originally rejected but then approved in late 2002, thereby allowing the third party claim asserted by the landlord who did not own or operate the UST system to be paid in full by the ELTF. (IPCA)

Response: This type of ELTF access is not authorized by the statute, therefore the comment exceeds the scope of this rulemaking.

Comment: The IPCA Supports the FAB, Indiana Legislature and the Indiana Supreme Court in the Definition of "Third Party" Liability and Opposes Efforts by IDEM and The Indiana Attorney General to Narrow or Alter the Definition. As stated above, when the ELTF was created in 1988, Indiana's Legislature decided that an express purpose of the Fund was to pay third party claims. Ind. Code 13-23-6-1, 13-23-7-1. Specifically, Indiana's Legislature expressly provided in Ind. Code 13-23-7-1 that the Fund "is established for the following purposes:... (2) Providing a source of money to satisfy liabilities incurred by owners and operators of underground petroleum storage tanks under Ind. Code 13-23-13-8 and 42 U.S.C. 699lb(h)(6) for corrective action" (first party claims); and... (4) "Providing a source of money for the indemnification of third parties under Ind. Code 13-23-9-3 (third-party claims). Ind. Code 13-23-7-1(2), (4) (See also Ind. Code 13-23-8-1(1), (2) IDEM shall use money in the Fund to pay (first party) corrective action costs incurred by owners and operators of USTs and for payment of the (third party) liability of owners and operators of USTs to third parties under Ind. Code 13-23-9-3 and for the attorney fees incurred by the UST owner and operator in defending the third party liability claim).

The Legislature also created the underground storage tank financial assurance board ("FAB" or "Board") to adopt rules, standards and procedures governing the administration of the Fund and the payment of claims. Ind. Code 13-23-11-1, et al., 13-23-8-4.5. For many years the Board has defined "third party liability" as follows:

> "Third party liability" is the damage a tank owner or operator is legally obligated to pay for injury suffered by a third party as the result of a release. Third party liability includes bodily injury and property damage."

The FAB has drawn distinctions between first party and third party claims in the types of damages and expenses that are eligible for reimbursement by the ELTF. For example, the FAB has promulgated a detailed list of expenditures associated with the performance of corrective action that may be recovered and those which cannot be recovered from the Fund. 328 IAC 1-3-5. Expenditures not eligible for reimbursement as a first party corrective action cost include items such as lost rent, lost income, diminution in property value, and attorneys' fees. However, such expenses suffered by a third party are eligible for payment by the ELTF. Another distinction is that a first party (UST owner's cleanup expenses) are subject to a deductible ranging up to $35,000 while a third party claim has no deductible, as it serves as a liability policy with first dollar coverage.

The FAB's current definition of "third party" does not exclude UST owners and operators as a "Third-Party." Under the Fund's statute and regulations, both UST owners and operators are eligible to coverage from the Fund to pay their respective third-party liabilities arising from a UST release. Nowhere, is third party liability defined to mean every claimant in the world except a UST owner or operator. Nor is "third party" defined as only those parties who do not have direct access to the Fund. Thus, there is no support, in the statute or the regulations, for the position recently taken by IDEM and the Indiana Attorney General that a UST owner and operator may not rely upon the Fund to pay the damages and expenses incurred by an owner or operator as a third party liability.

The IPCA's position and the FAB's existing definition are entirely consistent with the Indiana Supreme Court's most recent opinion on the issue of UST liabilities. In Bourbon MiniMart and Robert E. Wanemacher v. Gast Fuel and Services, Inc. et al., (Ind. S. Ct. Feb. 14, 2003) (a copy of which is enclosed as Exhibit 1), the Indiana Supreme Court addressed, among other things, the issue of a party's request for contribution under Indiana's UST cleanup statute for costs of cleaning up petroleum contamination from leaking underground storage tanks. Ind. Code 13-7-20-21. The Court held that the UST statute authorizes an "owner or operator of a UST to recover from a third party amounts paid to the state or that the owner or operator itself incurred for corrective action (whether the corrective action was ordered by IDEM or undertaken voluntarily) from any 'person who owned or operated the underground storage tank at the time the release occurred,' not just those solely responsible for the contamination." Op. at 17. The Court further held that "while the Amended Statute [enacted in 1991] expanded the class of corrective action for which owners and operators could seek recovery to include the costs of voluntary remediation, it also expanded the class of third persons from whom recovery could be sought." Id. Finally, the Court held that "the Legislature expanded the class of third persons from whom recovery could be sought from those solely responsible for its contamination to include any other person who owned or operated an UST at the time the release occurred." Id.

Thus, consistent with the IPCA's position, the FAB, the Indiana Legislature and the Indiana Supreme Court support a broad interpreta-

tion of the definition of "third party" as applied to UST liabilities to include owners and operators.

The issue of the recent position taken by IDEM and the Indiana Attorney General to narrow the FAB's definition of "third party" to exclude owners and operators has been fully briefed and is currently on appeal before the Office of Environmental Adjudication in a case styled as In The Matter of. Objection to the Denial of Excess Liability Fund Claim No. 9710523 Kiel Bros. Oil Co., Inc., Jefferson County Consolidated Cause No. 02-F-J-2851 and 02-F-J-2918. More detailed support for the position taken by the IPCA, FAB, Indiana Legislature and Indiana courts on this issue is set forth in the enclosed Petitioner's Brief In Opposition to The Motions For Summary Judgment Filed by the Indiana Attorney General and IDEM and In Support of Petitioner's Cross-Motion for Summary Judgment Regarding Payment of Petitioner's Third Party Claim By Indiana's Excess Liability Trust Fund, dated November 26, 2002 (See Exhibit 2); and Petitioner's Reply Brief In Support of Its Cross-Motion for Summary Judgment Regarding Payment of Petitioner's Third Party Claim By Indiana's Excess Liability Trust Fund, dated February 13, 2003 (See Exhibit #3), which are hereby referenced and incorporated herein as if fully restated. Also enclosed in support of the IPCA's position and incorporated herein as if fully redacted is the Reply Brief of Amicus Curiae Hukill Oil Co., Inc. To "Attorney General's Response to Kiel's Motion for Summary Judgment", dated February 12, 2003 (See Exhibit 4). (IPCA)

Response: IDEM agrees with the commentor that one of the fund's statutory purposes is to pay third party liability claims. The fund has consistently paid third party liability claims. IDEM has never tried to narrow or alter the plain meaning of the term "third party". IDEM recognizes that logically a first party cannot be considered a third party. As the administrator of the fund, the commissioner has taken the position in the above cited cases that is consistent with the law and consistent with the administrator's fiduciary duties to the fund.

Comment: The IPCA Supports the Current Level of Deductibles for First Party Expenses. The IPCA supports the existing requirement that a UST owner/operator is to first pay the applicable deductible, which ranges up to $35,000, on an eligible ELTF claim. As more fully explained above, UST owners/operators and their consultants should also be encouraged to adopt reasonable, cost-effective investigations and remediations of impacted UST sites. Efforts to modify this approach should not encourage unnecessary expenditures. In light of the November 2001 increase in the Reasonable Cost Guidelines, these adjustments properly addressed the need to bring the level of reimbursements from 1993 levels in line with the updated costs associated with UST investigations and remediations in 2001.

The IPCA looks forward to continuing to work with the FAB, IDEM and other interested stakeholders in ensuring that the legislative goals and policies for addressing UST liabilities under the IDEM and ELTF programs are fulfilled. If you have any questions about the IPCA's comments do not hesitate to contact me. Otherwise, we appreciate your consideration of these important issues. (IPCA)

Response: IDEM agrees. It has been productive to craft proposed rule changes with interested stakeholders to ensure that the legislative goals and policies are met.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#02-204 (FAB)[ELTF Change Rule]
Marjorie Samuel
Rules, Outreach and Planning Section
Office of Land 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 11th floor reception desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Outreach and Planning Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 8, 2004.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 328 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-2 "Administrator" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 2. "Administrator" refers to the ~~administrator of the fund.~~ **commissioner of the department.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 787)*

SECTION 2. 328 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-3 "Corrective action" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 3. "Corrective action" means ~~action taken~~ **any or all work performed or to be performed, including all work performed or to be performed under a CAP,** to:

(1) minimize;
(2) contain;
(3) eliminate;
(4) remediate;
(5) mitigate; or
(6) clean up a release **caused by an occurrence;**

including emergency measures taken as part of an initial response to the ~~release~~ **occurrence** under rules of the solid waste management board at 329 IAC 9-5-2. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 787)*

SECTION 3. 328 IAC 1-1-4 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-4 "Deductible amount" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-3; IC 13-23-8-4

Sec. 4. "Deductible amount" means the amount ~~set forth~~ **specified**

in IC 13-23-8-3 applicable to each incident number assigned by the department. A person applying to the fund under 328 IAC 1-3-1 must provide evidence of payment of the deductible amount under IC 13-23-8-4(a)(3). *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788)*

SECTION 4. 328 IAC 1-1-5.1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-5.1 "Emergency measures" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-4

Sec. 5.1. "Emergency measures" means any ~~action that is taken at or near a petroleum release to abate an immediate threat of harm to human health, property, or the environment.~~ **work described under IC 13-23-8-4(b)(1).** The actions taken must be approved by the department prior to payment from the fund. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-5.1; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788)*

SECTION 5. 328 IAC 1-1-8.3 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-8.3 "Reasonable" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 8.3. "Reasonable" means that the corrective action is appropriate and performed only as necessary to meet the cleanup objectives for the site. The term also means that corrective action and site characterization are consistent with 328 IAC 1-3-5(b) through 328 IAC 1-3-5(e). *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.3)*

SECTION 6. 328 IAC 1-1-8.5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-8.5 "Site characterization" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 8.5. "Site characterization" means the **work performed under the** initial site characterization described in rules of the solid waste management board at 329 IAC 9-5-5.1 ~~and~~ **or work performed under further site** investigations described in 329 IAC 9-5-6 and may include, as necessary, quarterly monitoring and pilot studies to determine the feasibility of remediation alternatives. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.5; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788)*

SECTION 7. 328 IAC 1-1-9 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-9 "Substantial compliance" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-4; IC 13-23-12

Sec. 9. **(a)** "Substantial compliance" means that, at the time a release was discovered:

(1) the owner or operator ~~had taken affirmative steps to comply with~~ **has met** the requirements of ~~IC 13-23-8-4.~~ **IC 13-23-8-4(a), with the exception of minor violations of:**

(A) statutory deadlines;
(B) regulatory deadlines; or
(C) regulatory requirements;

that do not cause harm or threaten to harm human health or the environment; and

(2) registration fees have been paid as required under IC 13-23-12 and 328 IAC 1-3-3.

(b) An owner or operator is not in substantial compliance if the release:

(1) has not been reported, under the spill reporting rule applicable at the time of the release, within seven (7) days of the discovery of the release; or

(2) harms or threatens to harm public health or the environment and was not timely reported under the spill reporting rule applicable at the time of the release.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-9; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)

SECTION 8. 328 IAC 1-1-10 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-10 "Third party liability" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 10. **(a)** "Third party liability" ~~is~~ **means** the damage a tank owner or operator is legally obligated to pay for injury, ~~expense,~~ **costs,** and damage suffered by a third party as the result of a release. ~~Third party liability~~ **The term** includes bodily injury and property damage. ~~Third party liability~~

(b) The term does not include **the following:**

(1) Punitive or exemplary damages.

(2) Claims arising on behalf or in favor of a claimant, an owner, or an operator.

(3) Costs that were previously determined ineligible for reimbursement.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-10; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)

SECTION 9. 328 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-1 Applicability
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 1. This article implements provisions of IC 13-23 for the administration of the fund. This article establishes procedures by which persons listed in 328 IAC 1-3-1 may apply to the fund for payment of ~~corrective action~~ **reimbursable** costs and third party liability claims. ~~arising from petroleum releases.~~ Payment of ~~corrective action~~ **reimbursable** costs and third party liability claims shall be made in accordance with the following:

(1) 328 IAC 1-3-4(b) applies to any one (1) site upon which
~~(A) an occurrence has not been reported to the department; or~~
~~(B)~~ the corrective action has not been completed as of the effective date of this rule.

(2) The **applicable** cost range or amount of the ~~expenditure to be~~

~~reimbursed by the fund,~~ **reimbursable cost,** as set forth in 328 IAC 1-3-5, shall be determined as of the date ~~the expense was initially incurred by the applicant to the fund.~~ **of the invoice for the work and the costs so incurred unless the work is performed by the owner, operator, or applicant, in which case, it is the date the work was performed.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)

SECTION 10. 328 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-3 Obligation of monies

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 3. (a) Claims shall be paid in the order received by the ~~department~~ **administrator** unless the procedure set forth in 328 IAC 1-4-1 is applicable.

(b) At the beginning of each state fiscal year, the administrator shall obligate sufficient monies for administering the fund. This amount shall be approved by the financial assurance board. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)*

SECTION 11. 328 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-1 Fund access

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-4

Sec. 1. The following persons may apply to the fund for payment of ~~expenditures arising from corrective action and~~ **reimbursable costs or** for ~~indemnification of~~ third party liability **claims:**

(1) Eligible tank owners and operators, including transferees as described in IC 13-23-8-4.

(2) Persons assigned the right of reimbursement by any person described in subdivision (1).

(3) Subsequent owners of the property upon which tanks were located, if the tanks were closed by a previous property owner, tank owner, or operator who is eligible.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790)

SECTION 12. 328 IAC 1-3-1.3 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-1.3 Cost effectiveness of corrective action

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-4

Sec. 1.3. (a) After the person described in section 1 of this rule has:

(1) completed the initial site characterization under 329 IAC 9-5-5.1 and the further site investigation under 329 IAC 9-5-6 for the release at the site; and

(2) submitted the information in clauses (A) through (C) to the administrator:

(A) for each of the remediation approaches as required by 329 IAC 9-5-6(d), details of the work to be performed and the projected costs;

(B) the approved CAP; and

(C) if appropriate, a demonstration that the remediation approach will substantially reduce or eliminate third party liability;

the administrator will determine if the work to be performed or the work already performed under the approved CAP is cost effective. The administrator may review information concerning cost effectiveness while reviewing a CAP submitted for approval; however, the administrator will not make a determination on cost effectiveness before a CAP is approved.

(b) The administrator's determination for cost effectiveness will be based on the information in subsection (a) and the following criteria:

(1) The likelihood that the remediation approach will achieve the cleanup objectives as set forth in the approved CAP.

(2) The length of time it will take to achieve the cleanup objectives based on the remediation approach is appropriate, considering actual impacts to human health and the environment.

(3) The cost projections under subsection (a)(2)(A) for the remediation approaches and the work to be performed do not exceed the reimbursable costs allowed under section 5(b) and 5(e) of this rule.

(4) The cleanup objectives are sufficient, but no more stringent than necessary, for the current land use expected for the site.

(5) A demonstration that the remediation approach will substantially reduce or eliminate third party liability.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.3)

SECTION 13. 328 IAC 1-3-1.6 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-1.6 Preapproval of costs

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-4

Sec. 1.6. (a) Persons described in section 1 of this rule may submit to the administrator a request for a preapproval of costs for work to be performed under the approved CAP. The administrator's preapproval will be based on the following:

(1) A determination of cost effectiveness under section 1.3 of this rule.

(2) Costs are reasonable.

(b) The administrator may ask for additional information to substantiate the projected work and projected costs.

(c) The administrator will send a preapproval letter to the owner or operator stating how much of the cost for each item of work is preapproved as reasonable and cost effective. This preapproval is not a determination on eligibility. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.6)*

SECTION 14. 328 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-2 Fund disbursement

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-4; IC 13-23-9-2; IC 13-23-9-3

Sec. 2. (a) Monies may be disbursed from the fund to persons listed in section 1 of this rule for payment of ~~corrective action~~ **reimbursable** costs. ~~in compliance with IC 13-23-8-4(a)(4) through IC 13-23-8-4(c) and IC 13-23-9-2(a) through IC 3-23-9-2(c). Site characterization costs may be disbursed from the fund to persons listed in section 1 of this rule prior to an approved or deemed approved CAP, if the work for which payment is sought is completed in accordance with rules of the solid waste management board at 329 IAC 9 or the risk integrated system of closure (RISC) standards.~~

(b) Monies may be disbursed to persons listed in section 1 of this rule for payment of ~~claims of liability to~~ third ~~parties~~ **party liability claims** in compliance with IC 13-23-9-3. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790)*

SECTION 15. 328 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-3 Eligibility requirements

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 6-8.1-10-1; IC 13-23-7; IC 13-23-8-4; IC 13-23-12

Sec. 3. (a) ~~Persons~~ **A person** listed in section 1 of this rule ~~must do~~ **shall comply with** the following **for a claim for reimbursable costs or a third party liability claim** to be ~~eligible~~ **considered** for reimbursement from the fund **by the administrator:**

(1) ~~Meet~~ The requirements ~~set forth~~ in IC 13-23-8-4(a)(1) through IC 13-23-8-4(a)(4) **have been met.**

(2) ~~In accordance with rules of the solid waste management board at 329 IAC 9-4 and rules of the water pollution control board at 327 IAC 2-6.1, communicate a spill report to the department of environmental management.~~ **The tank owner or operator must have been in substantial compliance with the spill reporting rule or law applicable at the time of the release.**

(3) Current tank owners or operators who have failed to pay all tank fees that are due under IC 13-23-12-1 by the date that the fees ~~are~~ **were** due, ~~shall be eligible for reimbursement from the fund in accordance with subsection (b) upon~~ **but who have now made** payment of all past **and currently** due fees, interest, and penalties.

(4) A person who acquires ownership in accordance with subsection ~~(e) shall be eligible for reimbursement from the fund upon~~ **(d) and has made** timely payment of all past due tank fees, interest, and penalties in accordance with subsection ~~(h)~~ **(g) for any site characterizations or corrective action related to an occurrence that occurs after the payment of all past and currently due fees, interest, and penalties**.

(5) The owner or operator must have registered the tank or tanks within thirty (30) days of the time the tank or tanks were first put into use, even if a release occurred before the tank or tanks were registered. Tanks are considered "in use" when the tank contains or has ever contained a regulated substance and has not been closed under 329 IAC 9-6.

(b) A tank owner or operator who fails to pay all tank fees that are due under IC 13-23-12-1 by the date that the fees are due shall be eligible for reimbursement from the fund according to the following formula:

(1) Determine the number of payments that were owed under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, beginning with the date that the fees for each tank first became due under IC 13-23-12 and continuing until the date on which the release occurred.

(2) Determine the number of payments actually made under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, beginning with the date each tank became regulated under IC 13-23 and continuing until the date on which the release occurred. Divide the number of payments actually made by the number of payments due as determined in subdivision (1).

(3) Determine the amount of money the person would have received from the fund if all payments due on the date the release occurred had been paid when due and multiply the amount by:

(A) the percentage determined in subdivision (2), if the percentage is fifty percent (50%) or more; or

(B) zero (0), if the percentage determined in subdivision (2) is less than fifty percent (50%).

(c) Payments that were made or could have been paid four (4) times per year under IC 13-23-12-3 count as one (1) payment for purposes of this section. Each payment made or due on each tank at a facility shall count as an additional payment for purposes of this section in figuring the total payments made or due.

~~(d) Persons listed in section 1 of this rule who have had a claim denied for failure to register an underground petroleum storage tank from which a release has occurred or for failure to pay all registration fees that are due under IC 13-23-12-1 by the date the fees are due may resubmit the claim, regardless of whether the denial was appealed, under subsection (a). The resubmission must be in the form of a letter providing the facility identification number, the incident number, and, if an appeal was filed, a copy of a document demonstrating the resolution of the appeal. The department has the option to settle any pending appeals and resubmitted claims.~~

~~(e)~~ **(d)** A person who acquires ownership or operation of an underground petroleum storage tank under IC 13-23-8-4.5(2) may become eligible for reimbursement from the fund by complying with subsection ~~(f)~~. **(e).**

~~(f)~~ **(e)** A person described under subsection ~~(e)~~ **(d)** may become eligible for reimbursement from the fund for any releases reported after the date that the ~~department~~ **administrator** receives the "Intent to Acquire UST and Reinstate Eligibility" form by doing the following:

(1) Submitting a fund "Intent to Acquire UST and Reinstate Eligibility" form (Form) as prescribed by the commissioner at least sixty (60) days prior to acquiring ownership or operation of an underground petroleum storage tank. This form will be kept confidential up to the earlier of the following:

(A) The date of the transfer of the property.

(B) The ~~department's~~ **administrator's** receipt of the monies provided in subsection ~~(g)~~. **(f).**

(C) For up to ninety (90) days after the projected date of closure listed in the Form.

The ~~department~~ **administrator** will provide a listing of environmental penalties, interest due to the fund, and fees due, to the prospective purchaser and the property owner within forty-five (45) days of receipt of the Form.

(2) Paying all applicable tank fees, including past due fees, interest, and penalties for each tank not more than thirty (30) days after the transaction whereby the person acquires ownership or operation of each tank.

(3) The seller of the underground petroleum storage tank site is liable for any and all unpaid tank fees, interest, and penalties that are

assessed by the ~~department~~ **administrator** in accordance with subsection ~~(g).~~ **(f).** The purchaser is to collect all past due tank fees, interest, and penalties from the noncompliant seller and remit to the ~~department~~ **administrator** the full amount of the assessment for the subject underground petroleum storage tank provided by the ~~department~~ **administrator** in accordance with subsection ~~(g)~~ **(f)** prior to an occurrence. The timely remittance of these monies is a condition of fund eligibility for the purchaser.

~~(g)~~ **(f)** Persons listed in section 1 of this rule and described in subsection ~~(e)~~ **(d)** who fail to pay tank fees when due are subject to payment of interest and penalties on those fees in order to become eligible for the fund under subsection ~~(f).~~ **(e).** Interest and penalties due will include the following:

(1) Penalties and interest due the department of revenue.

(2) All past due underground storage tank fees under IC 13-23-12.

(3) An environmental penalty as specified in subsection ~~(h)(2).~~ **(g)(2).** This penalty will be distributed into the fund and into the Petroleum Trust Fund in accordance with IC 13-23-12-7(b).

(4) Interest will be charged for the missed ~~fee(s)~~ **fee or fees** at the percent per year based on subsection ~~(h)~~ **(g)** and IC 6-8.1-10-1 until all fees due have been paid in full for each tank. This interest will be deposited into the fund.

Payment of all fees, interest, and penalties due within thirty (30) days of the date of transfer of the subject property is a requirement for fund eligibility for the purchaser.

~~(h)~~ **(g)** In addition to all past due fees owed, the amount of interest and penalties owed by a particular owner or operator is to be determined by the following formula:

(1) Interest as follows:

Number of delinquent days × daily interest rate = interest due

Interest will be calculated according to IC 6-8.1-10-1.

(2) Penalty as follows:

(A) For sites that were never registered, or sites for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars ($2,000) under IC 13-23-12-7(a) per petroleum underground storage tank **per year that passes after each year's fee is due. The table may be used or the following formula to calculate the penalty per tank:**

Where: n = total numbers of years late.

$Y_{i,j}$ = each year with an unpaid fee or a fee that was paid at least one (1) year late.

Yo = first year a fee was unpaid or paid at least one (1) year late.

m = most recent year where tank fees were unpaid or paid at least one (1) year late.

$$(2000)\left(\sum_{j=Yo}^{m}\left(\sum_{i=1}^{n} Y_{i,j}\right)\right) = \text{penalty}$$

Year due	1 year past year due	2 years past year due	3 years past year due	4 years past year due
Year 1	2,000	2,000	2,000	2,000
Year 2		2,000	2,000	2,000
Year 3			2,000	2,000
Year 4				2,000
Total per tank	2,000	6,000	12,000	20,000

(B) For ~~all other~~ sites **where fees have not been consistently or completely paid, or both,** the penalty will be calculated at one thousand dollars ($1,000) per petroleum underground storage tank for each year that passes after the fee becomes due and before the fee is paid. **The following table is an example of how penalties must be paid per tank:**

Year due	1 year past year due	2 years past year due	3 years past year due	4 years past year due
Year 1	1,000	1,000	1,000	1,000
Year 2		1,000	1,000	1,000
Year 3			1,000	1,000
Year 4				1,000
Total per tank	1,000	3,000	6,000	10,000

(C) The penalty is incurred:

(i) nine (9) months after the fee is due; or

(ii) three (3) months after the final yearly installment is due. Subsequent penalties are calculated yearly and are cumulative as specified in clause (B).

(D) Penalties will not be collected for fees due before December 1, 2001.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1104; errata, 20 IR 1593; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790; errata filed Feb 27, 2002, 9:58 a.m.: 25 IR 2254)

SECTION 16. 328 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-4 Amount of coverage

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-8

Sec. 4. (a) After payment of the applicable deductible amount, the fund may pay for **reimbursable** costs incurred by persons listed in section 1 of this rule ~~for corrective action~~ and third party liability **claims** as specified in IC 13-23-8-1.

(b) Regardless of the number of eligible persons listed in section 1 of this rule at one (1) site, no more than two million dollars ($2,000,000) may be reimbursed for the costs, including third party liability claims, associated with a single occurrence.

(c) An owner or operator may not receive payment for more than the allowable limits as specified in IC 13-23-8-8.

(d) For purposes of this section, "year" means a calendar year even if more than the maximum is received in any three hundred sixty-five (365) day period. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792)*

SECTION 17. 328 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-5 Costs

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-3-2; IC 13-23-8-4

Sec. 5. (a) **Reimbursable costs, excluding third party liability claims, are actual monetary amounts paid for work performed:**

(1) consistent with an approved or deemed approved CAP or

under one (1) or more of the provisions of IC 13-23-8-4(b); and (2) subject to the following conditions:

(A) Credits, rebates, refunds, or other similar payments made to the owner or operator or received by the owner, operator, or claimant must be subtracted from the costs submitted for reimbursement.

(B) The work performed was consistent with site characterization or an approved CAP.

(C) The work performed under the CAP has been determined to be cost effective under section 1.3 of this rule.

(D) The work performed has been determined to be reasonable under 328 IAC 1-1-8.3.

(E) The work was performed as described in subsection (b) or (e), or both, and is not described in subsection (d).

(b) Persons listed in section 1 of this rule may seek payment from the fund for the following **reimbursable** costs **or costs** related to ~~necessary costs actually incurred in the performance of corrective action:~~ **a third party liability claim of the type described as follows:**

(1) ~~Investigation~~ **Site characterization,** which includes research, field time, report writing, and clerical support.

(2) Lodging and per diem costs will be paid in accordance with the most current Indiana department of administration financial management circular covering state travel policies and procedures. Mileage shall be calculated at the federal rate for a privately owned automobile under 41 CFR 301-10.303, in effect on ~~September 6, 2000.~~ **January 16, 2003, 68 FR 494.** Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, ~~Government Printing Office, Washington, D.C. 20402.~~ **P.O. Box 371954, Pittsburgh, PA 15250-7954.**

(3) Persons listed in section 1 of this rule may employ a certified contractor under IC 13-23-3-2 or may use the owner's or operator's personnel to perform all or part of a corrective action.

(4) Soil and water sampling for petroleum and petroleum constituents shall be performed in accordance with rules of the solid waste management board at 329 IAC 9 or the risk integrated system of closure (RISC) standards **but not both.**

(5) ~~Expenditures~~ **Costs** for machinery and equipment must be prorated based on the normal expected life of the item and the length of time the item was used for a single corrective action. In no event will the fund pay for purchases of machinery and equipment in excess of the market cost of leasing the item for a corrective action. Examples of equipment charges ~~which~~ **that** can be made to the fund are disposable bailers and sample bottles.

(6) Persons listed in section 1 of this rule may be reimbursed for ~~expenditures~~ **costs** for materials and supplies, such as disposable protective equipment, building materials, **such as** piping **and** cement, and preservatives.

(7) Attorney fees, not to exceed twenty-five percent (25%) of the total claim or thirty thousand dollars ($30,000), whichever is less, shall only be payable if incurred by the owner or operator in defense of a third party liability claim.

(8) Governmental administrative fees for local, state, or federal permits necessary for corrective action.

(9) Provision of alternate water supply. This cost must have been previously approved by the ~~department.~~ **administrator.**

(10) Any other ~~reasonable~~ **reimbursable** costs the ~~department~~ **administrator** finds to be necessary. ~~for corrective action or~~ Payment of a third party liability claim **the administrator finds to be necessary.**

(11) Costs associated with transitioning a site to RISC will be paid if these costs would be less than the costs to complete the remediation under rules of the solid waste management board at 329 IAC 9.

(12) Markup of no more than ~~fifteen percent (15%)~~ **ten percent (10%)** will be reimbursed on all eligible costs except for the following:

(A) Travel costs, including mileage, per diem, and lodging.

(B) Personnel costs.

(C) Utilities for temporary facilities.

(D) Governmental administrative fees for local, state, or federal permits.

(E) Equipment and supplies not purchased or rented specifically for use at a facility or that are not part of the approved remedial technology.

(13) The cost is consistent with an approved CAP where projected costs for the work to be completed under the CAP are reviewed by the commissioner to determine whether the costs are reimbursable costs.

(c) The approval of the initial site characterization and the corrective action plan under rules of the solid waste management board at 329 IAC 9 does not necessarily mean that costs are reimbursable costs under this rule.

~~(b)~~ **(d)** The following ~~expenditures~~ **costs** are ~~ineligible for reimbursement,~~ **not reimbursable** from the fund:

(1) Costs incurred before April 1, 1988.

(2) Costs incurred more than twenty-four (24) hours prior to the date and time the suspected or the confirmed release has been reported under the spill reporting rule in effect at the time of the release.

~~(2)~~ **(3)** Costs of repair, upgrading, or replacement of an underground petroleum storage tank or its associated equipment.

~~(3)~~ **(4)** Costs of environmental investigation and remediation not directly related to a release from a qualifying underground storage tank. Ineligible costs include the cost of testing for nonpetroleum contamination and the cost of vapor or ground water monitoring devices that are not associated with corrective action.

(5) Costs that exceed reimbursable costs even if under an approved CAP.

~~(4)~~ **(6)** The cost of **labor and** equipment purchases other than those ~~expenditures~~ **costs** routinely required to implement a corrective action plan. Examples of equipment purchases that cannot be charged to a specific site include drilling rigs, earth moving equipment, photoionization detectors, explosimeters, and hand tools.

~~(5)~~ **(7)** The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with corrective action.

~~(6)~~ **(8)** Lost income or reduced property values unless part of a third party liability claim.

~~(7)~~ **(9)** Interest or finance charges.

~~(8)~~ **(10)** Contractor costs not directly related to corrective action activities, such as preparing cost estimates.

~~(9)~~ **(11)** Fines or penalties imposed by local, state, or federal governmental agencies.

~~(10)~~ **(12)** Punitive or exemplary damages.

~~(11)~~ **(13)** Any costs for remediation of contamination not shown to be above ~~the concentrations listed in the Indiana Department of Environmental Management Underground Storage Tank Guidance~~

~~Manual (1994), rules of the solid waste management board at 329 IAC 9, and~~ the RISC **industrial cleanup** standards **with the following exceptions:**

(A) Ground water contamination affecting a public drinking water well on-site or off-site.

(B) Contamination at concentrations exceeding RISC residential cleanup standards off-site, not including roadways.

~~(12)~~ **(14)** Any costs related to the excavation and disposal of more than one thousand five hundred (1,500) tons of soil unless:

(A) alternative remediation techniques have been considered;

(B) excavation and disposal was shown to be the ~~most cost effective~~ **least costly and quickest** remediation option; and

(C) the soil removal is part of a CAP approved or deemed approved by the commissioner.

~~(13)~~ **(15)** Any other cost not directly related to **site characterization,** corrective action, or third party liability or otherwise determined not to be reimbursable under this rule as a result of a financial or technical review.

(16) If a release has occurred before the tank or tanks were registered, and the tank or tanks were not registered within thirty (30) days from the time the tank or tanks were first put into use, a claim is not reimbursable from the fund by the administrator. Tanks are considered "in use" when the tank contains or has ever contained a regulated substance and has not been closed under 329 IAC 9-6.

~~(c) Appropriate expenditures which~~ **(e) Costs that** may be ~~considered for reimbursement,~~ **paid from the fund** are set forth in the following: ~~reimbursable expenditure chart. Sampling and analysis must be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", United States Environmental Protection Agency Publication SW-846, Third Edition (November 1986) as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (May 1999). Publication SW 846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~

Activity	Cost Range or Maximum Amount
SITE ~~INVESTIGATION~~ **CHARACTERIZATION**	
Mobilization and demobilization. ~~within a 50 mile radius.~~ This includes the cost of moving general contractor owned equipment, set-up, and removing equipment.	$300
Soil borings, **for purposes of soil or ground water sampling or monitoring well installation when using a hollow stem auger.**	
Number of feet in incremental amounts	
Less than 16 feet	$20 per foot
16 through less than 26 feet	$25 per foot
26 feet or more	$30 per foot
These amounts may only be charged one (1) time per borehole.	
Sample collection is part of well installation.	
Blind drilling using a hollow stem auger when well borings have already been logged within 5 feet.	
0-50 feet	**$6.50 per foot**
> 50 feet	**$8.50 per foot**
Decontamination and equipment cleaning	$10 per each 5 feet of boring
Cutting holes in concrete or asphalt (12 inches in diameter)	$90 per hole
Materials	
Well casing and screen (including riser) filter pack, annular, and surface seal:	
2 inch well	~~$10~~ **$7** per foot
4 inch well	$12 per foot
6 inch well	~~$15~~ **$22** per foot
Flush-grade well covers	$75 per cover
Laboratory services, including containers, packaging, and postage.	
Soil analysis methods	
TPH–8015 **GRO**	~~$75~~ **$60** per sample
TPH–8015 DRO	**$60 per sample**
TPH–8015 ERO	**$60 per sample**
TPH–418.1	~~$100~~ **$95** per sample
TRPH-HEM-1664/9071B	**$60 per sample**
VOC–8260	~~$200~~ **$150** per sample
SVOC–8270	~~$325~~ **$250** per sample
PAH-8270SIM	**$110 per sample**
PAH–8310	~~$185~~ **$150** per sample
~~PCB–8080~~ **PCB-8082**	$110 per sample
Metals– ~~(13)~~ **7 barium, cadmium, chromium, lead, mercury, nickel, zinc**	~~$170~~ **$100** per sample
TCLP-lead	**$110 per sample**
BTEX/MTBE–8021	~~$75~~ **$60** per sample
BTEX/MTBE–8260	~~$200~~ **$100** per sample
Ignitability	**$30 per sample**
Fractional organic carbon	**$70 per sample**

Water analysis methods	
TPH–8015 **GRO**	~~$75~~ **$60** per sample
TPH–8015 DRO	**$60 per sample**
TPH–8015 ERO	**$60 per sample**
TPH-8015 Methane	**$60 per sample**
TRPH-HEM-1664	**$60 per sample**
VOC–8260	~~$200~~ **$100** per sample
BTEX/MTBE–8021	~~$75~~ **$60** per sample
BTEX/MTBE–8260	~~$200~~ **$100** per sample
SVOC–8270	~~$325~~ **$250** per sample
PAH-8270 SIM	**$130 per sample**
PAH–8310	~~$185~~ **$140** per sample
Metals– ~~(13)~~ **7 barium, cadmium, chromium, lead, mercury, nickel, zinc**	~~$170~~ **$80** per sample
Metal-soluble iron	**$25 per sample**
~~Monitored natural attenuation parameters~~	
Nitrates	~~$15~~ **$25** per sample
~~Nitrites~~	~~$15 per sample~~
Sulfate	~~$15~~ **$25** per sample
Sulfide	**$25 per sample**
~~Dissolved methane~~	~~$50 per sample~~
COD	**$20 per sample**
BOD_5	**$40 per sample**
Total suspended solids	**$12 per sample**
Air analysis methods	
VOC-TO-15	**$400 per sample**
~~Use of RISC will require~~ **If the commissioner requires** DQO–Level IV, including raw data, internal chain of custody, and QA/QC.	20% markup allowed per sample
When submitting a claim for reimbursement, the claimant shall be required to give the personnel classification, task being performed, and the name of the individual performing the task. Rates will be paid based on the task performed by an employee rather than the qualifications of the employee. Refer to subsection ~~(d)~~ **(f)** for task descriptions for personnel classifications.	
Principal	$110 per hour
Senior project manager	$102 per hour
Project manager	$83 per hour
Staff project person	$70 per hour
Senior technician	$55 per hour
Technician	$38 per hour
Drafting person	$35 per hour
Word processor/clerical	$28 per hour
Toxicologist	$125 per hour
INITIAL ABATEMENT AND FREE PRODUCT REMOVAL	
Except where provided in this rule, approval of costs will be on a case-by-case basis.	
SITE SET-UP PREPARATION	
Trailer rental	$300 per month ($10 per day)
Portable toilet	$150 per month ($5 per day)
Utility check, the date and time of the utility check must be documented.	~~$400~~ **$600**
Utilities for temporary facilities	
Temporary power	$500 per month ($16.67 per day)
Temporary water	$150 per month ($5 per day)
Temporary phone	$200 per month ($6.67 per day)
DEMOLITION	
Concrete and asphalt removal	
Saw concrete, prices are per linear foot	

	4 inch concrete	6 inch concrete
Under 200 feet	$1.60 per foot	$2 per foot
200 through 400 feet	$1.40 per foot	$1.81 per foot
400 through 600 feet	$1.33 per foot	$1.70 per foot
600 through 1,000 feet	$1.20 per foot	$1.66 per foot
Over 1,000 feet	$1.08 per foot	$1.60 per foot

Saw asphalt, prices are per linear foot

	3 inch asphalt	4 inch asphalt	6 inch asphalt
Under 450 feet	$1.75 per foot	$1.90 per foot	$3 per foot
450 through 600 feet	$1.50 per foot	$1.75 per foot	$2.75 per foot
600 through 1,000 feet	$1.35 per foot	$1.50 per foot	$2.25 per foot
Over 1,000 feet	$1.25 per foot	$1.35 per foot	$2 per foot

Concrete removal, including the cost of loading and hauling to a ~~legal landfill~~ **land disposal facility permitted and willing to accept the waste** within 6 miles, but does not include landfill fees

4 inch concrete	$3 per ton
6 inch concrete	$5.77 per ton
7 inch through 9 inch concrete	$17.47 per ton
10 inch and over	$43.96 per ton
With rebar	Add 15%
For less than 500 square feet	Add 35%
Concrete curb	$5.04 per linear foot

Asphalt removal, including the cost of loading and hauling to a ~~legal landfill~~ **land disposal facility permitted and willing to accept the waste** within 6 miles, but does not include landfill fees

Removal asphalt pad (3 inches)	$0.25 per square foot
Removal asphalt curb	$1.41 per linear foot
For less than 500 square feet	Add 35%

EXCAVATION

Equipment costs and labor	$2.22 per ton
Mobilization	$300
Supplies, for example, visqueen.	
Stockpiling soil on-site	$1.34 per ton

Tank removal, decommissioning, cutting, and disposal are not eligible for reimbursement unless necessary as part of corrective action.

Costs for pumping, testing, and disposal of tank contents are not eligible for reimbursement

Under 1,000 gallons	$1,000 per tank
1,000 through 4,999 gallons	$1,500 per tank
5,000 through 10,000 gallons	$2,000 per tank
Above 10,000 gallons	$2,500 per tank

TRANSPORTATION

Loading	$1.34 per ton
Hauling, mileage must be documented	$0.37 per ton for each mile

DISPOSAL OF SOIL, GROUND WATER, AND TRASH

Landfill fees	
Sampling required by landfill. Must include receipts and analytical results from local municipality.	
Sanitary sewer, if approved for disposal of treated ground water. Must include receipts.	
Contaminated or disposable equipment and decontamination fluids.	

Landfill reimbursement will be based on the least expensive combination of documented transportation costs and documented disposal costs at a permitted landfill. **Applicant must submit a cost justification if the applicant does not use the nearest land disposal facility permitted to accept the applicant's waste.**

Trash	~~$15~~ **$20** per ton

APPROVED TECHNOLOGIES

~~Reimbursement~~ **The maximum costs** for corrective action ~~costs~~ will be ~~reimbursed~~ **approved** on the basis of the lowest of three (3) **comparable,** competitive bids ~~on~~ **for** the work specified in the corrective action plan. ~~that is approved or deemed approved by the department. If the claimant can provide sufficient technical justification for the selection of another bid, the corrective action costs associated with the higher bid will be reimbursed.~~ **Bids for the work specified in the CAP must include bids for installation and labor; however, separate bids may be obtained for cost of installation and labor. Copies of the request for proposal (RFP) for implementation of CAP that was sent to each vendor must be submitted. The administrator can approve costs based on less than three (3) bids if a demonstration is provided to the administrator that lower costs for the specified work is not possible or practical.**

Lease or rental on equipment will not be reimbursed above the purchase price.

SITE RESTORATION

Backfill hauling	$0.37 per ton for each mile

Backfill material	$13 per ton/stone $6.50 per ton/soil
Backfill placement, compaction, and density verification	$4 per ton
Resurfacing	
4 inch concrete	$3.25 per square foot
For each additional inch of concrete	Add $0.40 per square foot
For rebar	Add 15%
Asphalt pad, 4 inch thickness	$2.15 per square foot
Asphalt curb and gutter	$4.75 per linear foot
Island forms	
4 feet by 10 feet with 2 foot bumpers	$725 each
4 feet by 16 feet with 2 foot bumpers	$1,100 each
Equipment rental (based on daily rate; not an inclusive list)	
Decontamination equipment (bucket, brushes, detergent)	$10
Power auger	$50
Hand auger sampling kit (hand auger/brass sleeves)	$35
Slide hammer core sampler	$35
Photoionization detector	$75
Flame ionization detector	$95
~~LEL/O2~~ **LED/O2** meter	$50
pH and conductivity meter	$20
Dissolved oxygen meter	$30
Oxidation/reduction meter	**$35**
Multiparameter water quality meter including pH, dissolved oxygen, temperature, and conductivity	**$50**
Ferrous iron field test	**$6 per sample**
Hydrogen sulfite field test	**$6 per sample**
Digital camera	**$10**
2~~"~~ **inch** submersible pump	$115
4~~"~~ **inch** submersible pump	$95
Direct push technology	$1,200 per day $750 per ½ day
Rate allowed for drilling greater than 200 feet using direct push technology in a single day	**$6 per foot**
Steam cleaner/pressure washer	$75
Water level indicator	$12
Oil/water interface probe	$55
Bailer rental	$15
Anemometer	$35
Carbon dioxide meter	$25
Portable generator, generator ≤ 5kW	$50
~~Portable generator, generator > 5kW~~	~~$90~~
Portable generator, generator ≤ 10kW	$100
Portable generator, generator > 10kW	$125

~~(d)~~ **(f)** The following categories describe the personnel classification activity descriptions:

(1) Principal will do the following:
- (A) Supervise professional staff.
- (B) Serve as technical expert on sites.
- (C) Provide final review of project documents.
- (D) Limit site visits on projects.
- (E) Handle legal matters.
- (F) Coordinate with attorneys.

(2) Senior project manager (includes professional geologist, engineer, and hydrogeologist) will provide the following:
- (A) Project management/oversight.
- (B) Technical document preparation/review.
- (C) Coordination with the department, client, and contractors.
- (D) Hydrogeologic and contaminant modeling.
- (E) Supervision of investigation/remediation activities.
- (F) Site access/permitting.

(3) Project manager will provide the following:
- (A) Remediation work plan preparation (CAP, ISC, FSI, pilot study).
- (B) Site work preparation and planning.
- (C) Supervision of remediation activities.
- (D) Oversight of waste characterization, transportation, and disposal.
- (E) RISC statistics and equations.
- (F) Coordination of subcontractor work (drillers, plumbers, and electricians).
- (G) Coordination of heavy equipment mobilization.

(4) Staff project person will do the following:
- (A) Implement remediation system installation, operation, and maintenance.
- (B) Conduct site mapping.
- (C) Assist with waste characterization, transportation, and disposal.

(D) Oversee installation of soil borings and monitoring wells.
(E) Provide on-site supervision ~~and/or~~ **or** perform site characterization and remediation activities, **or both.**
(F) Oversee well water records searches.
(G) Define how site utilities are marked.
(H) Survey wells.
(I) Oversee free product removal.
(J) Conduct quarterly sampling.
(K) Provide drilling/sampling support.
(5) Senior technician will oversee the following:
(A) Activities associated with operation and maintenance of remediation system.
(B) Equipment installation.
(6) Field technician will oversee the following:
(A) Well purging and development.
(B) Sample collection.
(C) Drum labeling/disposal.
(D) Decontamination/site clean-up tasks.
(E) Sample preparation and delivery.
(7) Drafting person will do the following:
(A) Provide CADD work.
(B) Generate drawings, maps and plans, boring logs, and monitoring well installation logs.
(C) Revise drawings and maps and plans.
(8) Word processor/clerical will provide the following:
(A) Word processing/data input.
(B) General clerical duties.
(C) Documentation reproduction, report binding, and filing.
(D) Proofreading/editing.
(9) Toxicologist will provide guidance for nondefault risk-based closures utilizing nondefault toxicological parameters.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-5; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1105; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792; errata filed Feb 27, 2002, 9:58 a.m.: 25 IR 2255)

SECTION 18. 328 IAC 1-3-6 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-6 Limitation of liability
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 6. The application for or receipt of payment for ~~corrective action~~ **reimbursable costs** does not limit the legal responsibility of persons listed in section 1 of this rule for damages incurred by another person as a result of ~~a release.~~ **an occurrence.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-6; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 798)*

SECTION 19. 328 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-1 General procedure
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-9-4

Sec. 1. (a) The procedure set forth in this rule shall be followed in the event the unencumbered balance, ~~of funds~~ **less the unpaid, approved claims,** in the fund falls below twenty-five million dollars ($25,000,000). ~~or by the discretion of~~ The administrator **may invoke these procedures prior to the unencumbered balance, but less the unpaid, approved claims, in the fund falling below twenty-five million dollars ($25,000,000).**

~~(b) Each qualifying claim shall be assigned a priority score based on a ranking system designed to address the following:~~
~~(1) Initial prioritization of all claims shall be based on the degree of environmental threat existing at the time the occurrence was discovered. The administrator shall assign a priority score upon evaluation of the following technical criteria (listed in descending order, from highest priority to lowest priority, clause (A) having the highest priority):~~
~~(A) Impacts to public and private water supply.~~
~~(B) Type of petroleum.~~
~~(C) Health standards and explosivity hazard.~~
~~(D) Corrective action taken.~~
~~(E) Number of gallons released.~~
~~(F) Degree of access to contaminated soil.~~
~~(G) Designated use of surface water.~~
~~(H) Site geology and hydrology.~~
~~(2) For purposes of scoring claims resulting from occurrences before December 4, 1992, and after March 31, 1988, the administrator shall give additional consideration for when the corrective action was taken.~~
~~(3) Scoring of claims shall be determined by application of the following site assessment model:~~

~~Site Assessment Scoring Model for Prioritization of Claims~~

~~Criteria~~		~~Value~~
~~Site assessment information.~~		
~~Public drinking water supply or well within 1 mile:~~		
~~Is contamination present in drinking water?~~	~~YES~~	~~15~~
	~~NO~~	~~1~~
~~Number of wells within 1 mile~~		
	~~1~~	~~1~~
	~~2 through 3~~	~~2~~
	~~4 through 6~~	~~3~~
	~~6 or more~~	~~4~~
	~~Public water total _____ times 24 equals_____~~	
~~Private drinking water supply or well within 1 mile:~~		
~~Is contamination present in drinking water?~~	~~YES~~	~~15~~
	~~NO~~	~~0~~
~~Number of wells within 1 mile~~		
	~~1 through 10~~	~~1~~

11 through 25	2
26 through 100	3
greater than 100	4
Private drinking water total _____ times 12 equals _____	
Type of petroleum	
Mixed products or waste oil	15
Leaded gasoline	13
Gasoline	12
Jet fuels	10
Diesel fuels	9
Heating fuels	8
Kerosene fuels	7
Crude oil	5
Other	-
Type of petroleum total _____ times 10 equals _____	
Health standards and explosivity hazards	
Contamination phase	
Vapors present at the time release discovered	10
Free product present at the time the release was discovered	7
Surface contamination present at the time the release was discovered	5
Structures affected	
Residential housing	7
Municipal, commercial, or industrial	5
Utility lines or trenches	1
Area designation	
Large municipality or urban area	7
Small municipality or suburban area	5
Rural, agricultural, or livestock area	1
Health standards total _____ times 6 equals _____	
Corrective action taken	
Corrective action complete	5
Corrective action over 50% complete	5
Corrective action initiated	5
Corrective action approved by the department	5
Site characterization complete	5
Release response measures complete	5
Corrective action total _____ times 4 equals _____	
Number of gallons released	
Over 12,000	10
5,000 through 11,999	8
2,000 through 4,999	6
500 through 1,999	4
100 through 500	2
Under 100	1
Number of gallons released total _____ times 5 equals _____	
Degree of access to contaminated soil	
Contamination access	
Surface (0 to 2 feet below surface)	10
Subsurface (over 2 feet below surface)	5
Access total _____ times 4 equals _____	
Designated use of surface water	
Surface waters within ½ mile	
Lake or river	3
Swamp or wetlands	3
Pond or canal	2
Stream, creek, or active drainage ditch	1
Distance to surface waters	
Under 500 feet	3
500 feet to ¼ mile	2
Over ¼ mile	1
Designated use of surface water	
Drinking water	4

~~Recreational or full body human contact 3~~
~~Aquatic, wildlife, or partial human contact 3~~
~~Agriculture or livestock 2~~

~~Designated use of surface water total _____ times 4 equals _____~~

~~Site geology and hydrogeology~~
~~Soil type~~
~~Sand 4~~
~~Clay 1~~
~~Depth to water table in feet~~
~~0 through 10 4~~
~~11 through 20 3~~
~~21 through 40 2~~
~~Over 40 1~~
~~Unusual geologic factors, for example, fractured bedrock, sand or gravel veins, perched aquifers, or geological outcroppings~~
~~YES 5~~
~~NO 0~~

~~Site geology and hydrogeology total _____ times 3 equals _____~~

~~(c) To assure the efficient administration of the fund, the administrator may reclassify a claim at any time that it is determined a claim has been incorrectly ranked.~~

(b) All claims submitted to the administrator for work performed as a preapproved emergency measure will be paid first. Any work not preapproved as an emergency measure will be paid according to the category of the release as determined in section 1(c) of this rule.

(c) After the initial site characterization, further site investigation, or a corrective action progress report is completed, the release will be placed in the lowest numbered category for which it qualifies as follows, and claims submitted under subsection (a) shall be paid in numerical order of the release category unless the release is recategorized under section 3 of this rule:

(1) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and it is attributable to the release, then the release is considered a category 1 release and claims for that release shall be paid after all approved claims for emergency measures are paid as provided in section 1(a) of this rule:

(A) Vapors from regulated substances in a structure or a conduit, such as a storm sewer, sanitary sewer, or utility conduit, are detected at or above the lower explosive limit (LEL) using a properly calibrated combustible gas indicator (CGI).

(B) Vapors for regulated substances are detected in an inhabited or inhabitable building in levels greater than long term, risk-based exposure levels based on the use of the building.

(C) Regulated substances are detected in a drinking water well at or above maximum contamination levels (MCLs) or RISC residential ground water cleanup objectives at the point of compliance or at the tap.

(D) Regulated substances are detected in free phase in an underground conduit, such as a storm sewer, sanitary sewer, or utility conduit.

(E) Regulated substances are detected above maximum contamination levels (MCLs) or RISC residential ground water cleanup objectives within one (1) year time of travel of a wellhead of a public drinking waster supply system.

(F) Regulated substances are detected in free phase in surface water.

(2) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the release, then the release is considered a category 2 release and claims for that release shall be paid after all approved claims for category 1 releases are paid as provided in section 1(c)(1) of this rule:

(A) Regulated substances are detected in free phase in a thickness of at least one (1) foot in any one (1) well, or at least one (1) inch in two (2) or more wells where the wells are at least twenty (20) feet apart, provided that the wells are not screened in the UST cavity backfill.

(B) Regulated substances are detected in surface water above water quality standards under rules of the water pollution control board at 327 IAC 2.

(3) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the release, then the release is considered a category 3 release and claims for that release shall be paid after all approved claims for category 2 releases are paid as provided in section 1(c)(2) of this rule:

(A) Regulated substances are detected at a location not on the site of the release in ground water at concentrations exceeding RISC cleanup standards appropriate for the land use of the off-site location.

(B) Regulated substances are detected at a location not on the site of the release in soil at concentrations exceeding RISC cleanup standards appropriate for the land use of the off-site location.

(C) Regulated substances are present in free phase in a thickness of at least one-sixteenth ($^1/_{16}$) inch in any well.

(4) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the release, then the release is considered a category 4 release and claims for that release shall be paid after all approved claims for category 3 releases are paid as provided in section 1(c)(3) of this rule:

(A) Regulated substances are detected in on-site ground water at concentrations exceeding RISC industrial cleanup standards in two (2) or more wells, where the wells are at least twenty (20) feet apart, where neither well is screened in the UST cavity backfill.

(B) Regulated product is detected in on-site soil at concentra-

tions exceeding RISC industrial cleanup standards in at least two (2) boring holes at least twenty (20) feet apart.

(5) A release that does not qualify as a category 1, 2, 3, or 4 category will be considered a category 5 release.

(6) Claims submitted under identical categories are prioritized according to the date and time received by the administrator, as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.

(d) Initial releases shall be classified according to those conditions that existed at the time the release or occurrence was discovered.

(e) Claims determined to be unacceptable may be revised and resubmitted to the fund. The priority ranking process of the revised claim shall be based on the date and time that the fund administrator receives the revised claim, as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.

(f) A claimant may request a review of a denial of payment using the procedures set forth in IC 13-23-9-4.

~~(d)~~ **(g) Classification of a release or** placement of a claim on a priority list does not constitute a commitment to reimburse corrective action or third party liability costs. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed Nov 1, 1995, 8:30 a.m.: 19 IR 347; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 799)*

SECTION 20. 328 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-3 Reclassification of releases

Authority: IC 13-14-8
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 3. ~~(a) Except for environmental emergencies, initial claims shall be ranked according to those conditions which existed at the time the corrective action was commenced. Claims determined to be of identical priority shall be ranked according to the date that an acceptable claim was received by the fund.~~

~~(b) Subsequent claims may be reprioritized based on the environmental threat present during the time period for which additional reimbursement is being claimed.~~

~~(c) The administrator shall notify claimants within sixty (60) days after the receipt of their claims whether their claims shall be approved for payment. If a claim is determined to be unacceptable or ineligible after reviewing the submitted information in accordance with IC 13-23-9-2, the administrator shall notify the owner or operator within ten (10) days of the denial and inform the claimant of the reasons for which the claim was rejected.~~

~~(d) Claims determined to be unacceptable may be revised and resubmitted to the fund. The priority ranking process of the revised claim shall be based on the date that the fund receives the revised claim.~~

~~(e) A claimant may request a review of a denial of payment using the procedures set forth in IC 13-23-9-4.~~

(a) To assure the efficient administration of the fund, the administrator may reclassify a release at any time that it is determined a claim release has been incorrectly classified:

(1) The administrator will notify the applicant by mail of any new classification, and fifteen (15) days after the notification any new costs will be under the new category.

(2) The applicant may petition the administrator to be put in a lower number category based on new information.

(3) If the administrator approves placement in a lower number category, the applicant may seek reimbursement under the new category for any costs incurred subsequent to the placement.

(b) Releases may be recategorized based on:

(1) the environmental threat present during the time period for which additional reimbursement is being claimed;

(2) information indicating the elimination or abatement of the condition or conditions that lead to the placement of a release in a category;

(3) other information is submitted to the administrator; or

(4) the discovery of the event that lead to the placement in a higher category with category 1 being the highest.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534)

SECTION 21. 328 IAC 1-4-4 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-4-4 Monthly reimbursement

Authority: IC 13-14-8
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 4. (a) The total amount reimbursed from the fund must not exceed ten percent (10%) of the fund balance based on the average fund balance of the previous fiscal quarter unless the unencumbered balance, less the unpaid approved claims, in the fund is equal to or greater than twenty-five million dollars ($25,000,000).

(b) At no time will the fund balance be allowed to fall below twenty-five million dollars ($25,000,000). *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-4)*

SECTION 22. 328 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

Rule 5. Claims

328 IAC 1-5-1 Applications for payment of reimbursable costs

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 1. (a) Claim applications for reimbursement ~~of corrective action costs~~ shall be submitted on forms adopted by the administrator. Claimants shall itemize all ~~charges~~ **reimbursable costs** as required by the application package. Documentation of ~~expenses~~ **reimbursable costs** as required by the administrator must be submitted as part of the application. **The commissioner may request additional information and records to substantiate claims submitted including the following:**

(1) A copy of original employee time sheets.

(2) Invoices relating to purchase or other acquisition of equipment and supplies used for corrective action.

(3) Copies of requests for bids for work specified in the CAP.

(b) The application shall contain the following statement, which shall be signed and attested by the person applying to the fund **and the owner/operator, if not the same:** "I swear or affirm to the best of my knowledge and belief that the costs presented herein represent the ~~actual~~ **reimbursable** costs incurred in the performance of **site characterization or** corrective action related to this site during the period of time indicated on this application. I also swear or affirm that all charges presented as part of this application were necessary to the performance of **site characterization or** corrective action.".

(c) Two (2) copies of all documents required by the administrator shall be submitted by the person applying to the fund to support the application. Original documents must be kept by the person applying to the fund for a minimum of four (4) years after the date the application for payment was submitted or four (4) years after completion of corrective action, whichever is later.

(d) A single claim application may not be submitted to the fund for reimbursement in an amount less than the following:

~~(1) Initial claim may be submitted for any amount, including $0/eligibility preapproval claims.~~

~~(2) Subsequent~~ **(1) All** claims, five thousand dollars ($5,000) unless the claim is:

(A) the final application for that incident;

~~(B) for a third party liability claim; or~~

~~(C)~~ **(B)** for costs incurred over ~~a period of four (4) months or longer.~~ **six (6) months from the date of the last claim; or**

(C) within fifteen (15) days of a release being classified under 328 IAC 1-4.

(2) Zero dollars ($0)/eligibility preapproval claims.

(3) ~~Persons applying to the fund may resubmit claims in any amount if the costs were disallowed for lack of backup documentation.~~ **Claims that had costs disallowed may be resubmitted with subsequent claims; however, the portion of the claim that was previously submitted must be identified as being previously submitted and include the dollar value of the original claim.**

Persons applying to the fund shall identify the final application as such. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed Nov 1, 1995, 8:30 a.m.: 19 IR 349; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801)*

SECTION 23. 328 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-5-2 Fund payment procedures; eligibility preapproval
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 2. (a) Contingent on the availability of monies as determined by 328 IAC 1-2-3, the administrator shall authorize payment upon determining that the requirements of IC 13-23-9-2 have been met. **Payment will be made as follows:**

~~(b) Processing and payment of claims are contingent upon the availability of monies.~~

~~(c)~~ **(1)** When a person applying to the fund submits an application under section 1 of this rule, which includes ~~expenses~~ **costs** for which that person has not made payment, then payment shall be made by check jointly to the person applying to the fund and the contractor involved.

~~(d)~~ **(2)** When a person applying to the fund submits documentation verifying that ~~that~~ **the** person has ~~paid for~~ **incurred** costs ~~of~~ **for site investigation or** corrective action, payment shall be made by check directly to that person.

(b) A determination under this rule is appealable under IC 13-23-9-4.

~~(e)~~ **(c)** A person who may apply to the fund under 328 IAC 1-3-1 may seek preapproval of ~~a site's~~ eligibility to have ~~corrective action~~ **reimbursable** costs ~~reimbursed~~ **or third party liability claims paid** from the fund. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801)*

SECTION 24. 328 IAC 1-5-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-5-3 Deemed approved; reimbursement of costs
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-4

Sec. 3. "Deemed approved", under IC 13-23-8-4, means that the ~~department~~ **administrator** shall consider the CAP approved solely for purposes of reimbursement of ~~reasonable~~ **reimbursable** costs from the fund. A CAP having been deemed approved shall in no way relieve the person applying to the fund of the obligation to ~~comply~~ **be in substantial compliance** with all applicable rules or department standards. **A deemed approved CAP shall be superseded by the administrator's issuance of a determination on the CAP.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-3; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802)*

SECTION 25. 328 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-6-1 Applications for payment of third party liability claims
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-3

Sec. 1. (a) Applications for reimbursement of third party liability claims against owners or operators shall be submitted on approved forms established by the ~~department.~~ **administrator.** The claimant must attach either a certified copy of a legally enforceable final judgment against the owner or operator or a reasonable settlement between the owner or operator and the third party.

(b) The owner or operator must submit proof of payment of the deductible amount under IC 13-23-8-3.

(c) When submitting an application to the administrator under subsection (a), the owner or operator must also forward a copy of the request to the attorney general.

(d) The minimum single claim amount contained in 328 IAC 1-5-1(d)(1) does not apply to third party liability claims. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802)*

SECTION 26. 328 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-6-2 Fund payment procedures for third party liability
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-9-3; IC 13-11-2-193.5

Sec. 2. (a) If the attorney general determines that the requirements under IC 13-23-9-3 have been met, the attorney general shall approve a request for indemnification of a third party not later than sixty (60) days after receiving the request:

(1) if sufficient monies exist after other obligations have been met under 328 IAC 1-2-3;

(2) based upon priority ranking of the site under 328 IAC 1-4 if applicable; and

(3) if the administrator determines that the owner or operator is in compliance with the requirements of IC 13-23 and rules adopted thereunder.

(b) When an owner or operator submits an acceptable application for indemnification of a third party but the claim has not already been paid by the owner or operator, then payment shall be made jointly by check to the eligible owner or operator and the third party.

(c) When an eligible owner or operator submits an acceptable application for indemnification of a third party along with documentation verifying that the owner or operator has paid the third party liability claim, payment shall be made directly to the eligible owner or operator.

(d) Third party liability claims subject to review by the attorney general shall include the reasonable fees or compensation paid to obtain:

(1) access to properties not controlled by the claimant;

(2) institutional controls, including, but not limited to, ~~deed restrictions required by risk integrated system of closure (RISC)~~ **restrictive covenants as defined under IC 13-11-2-193.5;** or

(3) subdivisions (1) and (2).

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802)

SECTION 27. 328 IAC 1-7-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-7-1 Financial assurance certificate
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 1. (a) In accordance with 40 CFR 280.101, the department ~~shall~~ **may** issue a certificate of financial assurance upon request to each eligible tank owner or operator, as defined in 328 IAC 1-3-3, within sixty (60) days after the effective date of this rule. Under IC 13-23 and the rules promulgated thereunder, this state-issued certificate shall fulfill the federal financial assurance requirements.

(b) The certificate of financial assurance shall contain the following information:

(1) Facility name and address.

(2) Facility identification number issued by the department.

(3) Amount of funds for corrective action and compensating third parties that is assured by the fund.

(c) The owner or operator shall maintain the certificate of financial assurance in compliance with rules of the solid waste management board at 329 IAC 9-8-21. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802)*

SECTION 28. 328 IAC 1-7-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-7-2 Termination of financial assurance by the department
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 2. If, after consultation with the financial assurance board, the department determines that insufficient monies exist to provide owners or operators evidence of financial assurance, the department shall notify all fund participants by certified mail. The fund coverage will continue for sixty (60) days after notice of ~~termination of coverage.~~ **insufficient funds.** Owners or operators shall have sixty (60) days after receipt of termination of financial assurance to acquire financial assurance by other means. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 803)*

SECTION 29. THE FOLLOWING ARE REPEALED: 328 IAC 1-1-8; 328 IAC 1-7-3.

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on March 11, 2004, at 1:30 p.m., Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 4 and 5, Indianapolis, Indiana, the Indiana Financial Assurance Board will hold a public hearing on amendments to 328 IAC 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 Lynn C. West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 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 Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, 11th Floor, Indianapolis, Indiana, and are open for public inspection.

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-3

FOR: 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

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS: On January 24, 2003, conditions existed constituting an energy emergency in relation to the delivery of propane.

WHEREAS: Those conditions, detailed in Executive Order 03-01 issued January 24, 2003, included extremely cold weather; unusually high demand for winter heating fuels; long lines and waiting times at propane distribution centers in both Northern and Southern Indiana; high demand for propane at Indiana distribution centers; shortages of propane at some distribution centers; limitation on propane drivers' time to make deliveries because of long waits for distribution at terminals; further limitations on drivers' ability to make deliveries because of the 70-hour federal limit on hours propane drivers may drive in any 8-day period; and a threat that some customers will not receive propane because of these conditions.

WHEREAS: These conditions constituted an energy emergency sufficient to justify waiver of the 70-hour limit, and this limit was waived by Executive Order 03-01, which expired at midnight, January 28, 2003. On January 28, 2003, those conditions persisted, justifying a 24-hour extension of the energy emergency through midnight on January 29, 2003 in Executive Order 03-02.

WHEREAS: Additional conditions now exist justifying continuation of the emergency through January 31, 2003. During the weekend of January 25-26, 2003, the Griffith and Huntington terminals ran out of propane supply and were not dispensing propane for three days. The Lima, Ohio terminal has not dispensed propane for several days. Additionally, the Lemont and Morris terminals in Illinois experienced intermittent electrical problems leading to the suspension of loadings for several hours. These terminal outages and problems have meant that drivers who would normally use those facilities must drive further to other terminals, continuing the problem of long lines at the state and regional terminals that remain in service. Also, a significant snowfall fell across Indiana on the night of Saturday, January 25, further slowing the progress of propane transports. The extreme cold of mid- and late-January resulted in the need for propane retailers to accelerate their schedules for replenishing the tanks of "keep full" customers. Normal but still cold weather has remained in Indiana since the issuance of Executive Order 03-01. These temperatures have made for continuing demand upon retailer propane dealers and an inability to replenish reserve storage capacity. Weather forecasts for Indiana indicate high temperatures in the 30's over the course of January 30 and 31, with 30's and 40's forecast for the weekend of February 1-2. These temperatures will reduce consumer demand and mitigate the present emergency conditions.

WHEREAS: There is ample heating fuel available in the region, but the propane transport infrastructure is currently unable to keep up with the demand generated by the unusual cold over so wide a region of the country. By declaring an emergency and waiving the federal restriction on driver hours, propane transports will be able to continue operating until the predicted warming trend arrives.

WHEREAS: Title 49 CFR Part 390.23 of the Federal Motor Carrier Safety Regulation provides that a Governor of a State may declare an emergency thereby exempting motor carriers or drivers operating a commercial vehicle from parts 390 through 399 of the Federal Motor Carrier Safety Regulations.

NOW, THEREFORE, I, Frank O'Bannon, by virtue of the authority vested in me as Governor of the State of Indiana as well as Indiana Code 10-4-1-7.1 and 49 CFR Part 390.23 do hereby:

DECLARE: A State of Energy Emergency exists in Indiana relating to the delivery of propane; and

ORDER: An exemption is provided to 49 CFR 395.3(b) of the Federal Motor Carrier Safety Regulations for the motor carriers while providing propane to customers in Indiana during the emergency. The provisions of 49 CFR 395.3(a) remain in effect. This exemption applies only to those motor carriers providing direct assistance to the emergency relief effort. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort or when the carrier dispatches such driver to another location to begin operations in commerce.

Nothing contained in this declaration shall be construed as an exemption from the Controlled Substances and Alcohol Use and Testing requirements (49 CFR 382), the Commercial Drivers License requirements (49 CFR 383), the Financial Responsibility requirements (49 CFR 387), applicable Size and Weight requirements, or any other portion of the regulations not specifically identified.

This declaration of a State of Energy Emergency is in effect beginning at 12:01 a.m. Thursday, January 29, 2003, and shall remain in effect for the duration of the emergency (as defined in 49 CFR Part 390.5) or until midnight, Friday, January 31, 2003, whichever is earlier.

IN TESTIMONY WHEREOF, I, Frank O'Bannon, have hereinto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 29th day of January 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-4

FOR: MICHAEL SCHRADER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, MICHAEL SCHRADER was convicted in the St. Joseph County Court for the crime of Armed Robbery on October 22, 1990 and received a sentence of four years; and

WHEREAS, the petitioner in this case requests a pardon to improve his employment opportunities; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in this case, recommend that a pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to MICHAEL SCHRADER.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-5

FOR: WILLIAM BOWMAN

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, WILLIAM BOWMAN was convicted in the Marion County Superior Court on February 1, 1968 for the crime of Second Degree Burglary and received a sentence of 9 months; and

WHEREAS, the petitioner in this case has earned the confidence and support from his peers in the community; and

WHEREAS, the petitioner has letters of recommendation to grant a pardon; and

WHEREAS, the petitioner in this case requests a pardon to improve his employment opportunities; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to WILLIAM BOWMAN.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-6

FOR: WILLIAM J. FOGERTY

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, WILLIAM J. FOGERTY was convicted in the Grant County Circuit Court on January 13, 1972 for the crime of Second Degree Burglary and received a sentence of 2 - 5 years, suspended to 2 years probation; and

WHEREAS, the petitioner in this case has been crime free for over 30 years; and

WHEREAS, the petitioner was 19 years of age at the time of the offense; and

WHEREAS, the petitioner has letters of recommendation to grant a pardon; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to WILLIAM J. FOGERTY.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-7

FOR: NATHAN COLBERT, JR.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, NATHAN COLBERT JR. was convicted in the Marion County Criminal Court on June 26, 1967 for the crime of Robbery and he received a sentence of 6 months (minor statute); and

WHEREAS, the petitioner was 19 years of age at the time of the offense; and

WHEREAS, the petitioner served his country honorably for 21 years in the Marine Corp; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to NATHAN COLBERT, JR.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-8

FOR: JAMES WEAVER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, JAMES WEAVER was convicted in the Wayne Circuit Court on August 23, 1984 for the crime of Vehicle Theft and received a sentence of 2 years probation; and

WHEREAS, the petitioner requests a pardon to improve his employment opportunities; and

WHEREAS, the petitioner has earned the confidence and support from his peers in the community; and

WHEREAS, the petitioner has letters of recommendation to grant a pardon; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to JAMES WEAVER.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-9

FOR: JEFFREY D. THOMAS

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, JEFFREY D. THOMAS was convicted in the Marion County Superior Court on January 14, 1988 for the crime of Armed Robbery and received a sentence of 2 years; and

WHEREAS, the petitioner has letters of recommendation to grant a pardon; and

WHEREAS, the petitioner in this case request a pardon to clear his name and improve his employment opportunities; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to JEFFREY D. THOMAS.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-10

FOR: ANTHONY HIGGS

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, ANTHONY HIGGS was convicted in the Hammond City Court on April 12, 1989 for the crime of Battery on Law Enforcement and received a sentence of 364 days, suspended, one year probation, $500.00 fine, court costs; and

WHEREAS, the petitioner in this case has earned the confidence and support from his peers in the community; and

WHEREAS, the petitioner has letters of recommendation to grant a pardon; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to ANTHONY HIGGS.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-11

FOR: LAWANA WESTMORELAND

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, LAWANA WESTMORELAND was convicted in the Marion County Municipal Court on February 6, 1991 for the crime of Possession of Cocaine and received a sentence of one year, suspended to probation. Petitioner was convicted on July 17, 1995 for the crime of Prostitution and received a sentence of 365 days suspended, 180 days suspended. On February 5, 1996 petitioner was convicted of Possession of Cocaine and received a sentence of 365 days suspended to probation; and

WHEREAS, the petitioner has earned a Bachelor of Arts Degree; and

WHEREAS, the petitioner has earned the confidence and support from her peers in the community; and

WHEREAS, the petitioner has letters of recommendation to grant a pardon; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to LAWANA WESTMORELAND.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-12

FOR: DAVID PEARSON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, DAVID PEARSON was convicted in the Putnam County Circuit Court on February 6, 1970 for the crime of Escape and received a sentence of one to five years; and

WHEREAS, the petitioner has earned the confidence and support from his peers in the community; and

WHEREAS, the petitioner has letters of recommendation to grant a pardon; and

WHEREAS, the petitioner was 17 years of age at the time of the offense; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to DAVID PEARSON.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 20th day of March 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-13

FOR: DARLENE FAYE LEONARD

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, DARLENE FAYE LEONARD was convicted in the Marion County Criminal Court on September 5, 1985 for the crime of Possession of Marijuana under 10 grams and received a sentence of one year probation, 40 hours community service with five days executed; and

WHEREAS, the petitioner in this case has no other criminal history; and

WHEREAS, the petitioner has earned the confidence and support from her peers in the community; and

WHEREAS, the petitioner has several letters of recommendation to grant a pardon; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to DARLENE FAYE LEONARD.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 22nd day of May 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-14

FOR: JEFFREY D. LEONARD

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, JEFFREY D. LEONARD was convicted in the Marion County Criminal Court on July 24, 1985 for the crime of Fleeing Law Enforcement and he received a sentence of 3 days in jail, 1 year probation; 2) petitioner was convicted in the Hamilton County Court on Jan. 6, 1986 for the crime of Possession of Marijuana, Class D felony and received a sentence of 2 years suspended to probation; and 3) petitioner was convicted in the Jay County Court on Feb. 10, 1994 for the crime of Battery Resulting in Bodily Injury and received a sentence of 1 year, suspended to 60 days; and

WHEREAS, the petitioner has earned the confidence and support from his peers in the community; and

WHEREAS, the petitioner has several letters of recommendation to grant a pardon; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to JEFFREY D. LEONARD.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 22nd day of May 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-15

FOR: MARY ELIZABETH COOK

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, MARY ELIZABETH COOK was convicted in the Marion County Criminal Court on June 22, 1981 for the crime of Forgery, Class C Felony and received a sentence of two years suspended, one year probation; and

WHEREAS, the petitioner in this case has been crime free for over 21 years; and

WHEREAS, the petitioner has letters of recommendation to grant a pardon; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to MARY ELIZABETH COOK.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 22nd day of May 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-16

FOR: JACK HARPER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, JACK HARPER was convicted in the Marion County Superior Court on July 20, 1982 for the crime of Forgery, Class C Felony, two counts and received a sentence of two years, five years probation; and

WHEREAS, the petitioner has no other criminal history; and

WHEREAS, the petitioner in this case has been crime free for over 20 years; and

WHEREAS, the petitioner requests a pardon to clear his name; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to JACK HARPER.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 22nd day of May 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-17

FOR: THE CREATION OF THE NATIVE AMERICAN INDIAN AFFAIRS COMMISSION

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, there continues to be a need for a forum for the discussion of issues pertaining to Native American citizens of Indiana, their traditions, beliefs, values, and ideas; and

WHEREAS, the Native American Council, created by Executive Order 97-24, has provided that forum in the past; and

WHEREAS, the General Assembly enacted SEA 337 in 2003 to establish a Native American Indian Affairs Commission to study problems common to Native Americans in Indiana and to make recommendations to relevant governmental bodies regarding issues of health, employment, culture, economic development, Native American archaeological sites, and other matters; and

WHEREAS, SEA 337 was vetoed because, as drafted, it restricted participation to members of federally recognized tribes, thereby

inadvertently excluding significant groups of Native Americans in Indiana.

NOW THEREFORE, I, Frank O'Bannon, by virtue of the authority vested in me as Governor of the State of Indiana by the Constitution and laws of this state, do hereby **ORDER** that:

1. The Native American Indian Affairs Commission is established.
2. The commission consists of seventeen (17) voting members and two (2) nonvoting members appointed by the Governor. The voting members of the commission consist of the following:
   (a) Seven (7) Native American Indians;
   (b) Two (2) Native American Indians who have knowledge in Native American traditions and spiritual issues;
   (c) The commissioner of the Department of Correction or the commissioner's designee;
   (d) The commissioner of the Commission for Higher Education or the commissioner's designee;
   (e) The commissioner of the State Department of Health or the commissioner's designee;
   (f) The secretary of the Office of Family and Social Services or the secretary's designee;
   (g) The director of the Department of Natural Resources or the director's designee;
   (h) The state Superintendent of Public Instruction or the superintendent's designee;
   (i) The commissioner of the Department of Workforce Development or the commissioner's designee;
   (j) The director of the Indiana Historical Bureau or the director's designee.

   One of the voting members of the commission, selected by the Governor, shall serve as chairperson. The nonvoting members of the commission consist of the following:
   (a) One (1) member of the House of Representatives appointed by the speaker of the House of Representatives.
   (b) One (1) member of the Senate appointed by the president pro tempore of the Senate.
3. As used in this Executive Order, "Native American Indian" means an individual who is at least one (1) of the following:
   (a) An Alaska native as defined in 43 U.S.C. 1602(b);
   (b) An Indian as defined in 25 U.S.C. 451b(d);
   (c) A native Hawaiian as defined in 20 U.S.C. 7912(1); or
   (d) A person who has demonstrated membership in a tribe that:
      a. is located in Indiana; and
      b. has established documented historical recognition.

   Indiana associations that represent Native American Indians may nominate individuals for the commission.
4. The affirmative votes of at least nine (9) members of the commission are required for the commission to take any official action, including public policy recommendations and reports.
5. The Department of Workforce Development and Department of Natural Resources shall provide staff and administrative support for the commission.
6. The commission shall study issues common to Native American Indian residents of Indiana in the areas of employment, education, civil rights, health, and housing. The commission may make recommendations to appropriate federal, state, and local governmental agencies concerning the following:
   (a) Health issues affecting Native American Indian communities, including data collection, equal access to public assistance programs, and informing health officials of cultural traditions relevant to health care;
   (b) Cooperation and understanding between the Native American Indian communities and other communities throughout Indiana;
   (c) Cultural barriers to the educational system, including barriers to higher education and opportunities for financial aid and minority scholarships;
   (d) Inaccurate information and stereotypes concerning Native American Indians, including the accuracy of educational curriculum;
   (e) Measures to stimulate job skill training and related workforce development, including initiatives to assist employers to overcome communication and cultural differences;
   (f) Programs to encourage the growth and support of Native American Indian owned businesses;
   (g) Public awareness of issues affecting the Native American Indian communities;
   (h) Issues concerning preservation and excavation of Native American Indian historical and archeology sites, including reburial of Native American Indians; and
   (i) Measures that could facilitate easier access to state and local government services by Native American Indians.

   The commission should examine whether the problems and solutions to the matters listed above differ as between Native American Indians residing in Indiana who are members of federally recognized tribes and those who are not members of federally recognized tribes. It should also examine whether and how the problems and solutions are unique to Native American Indians residing in Indiana as compared with other groups in the population.

7. The commission may not study or make recommendations regarding negotiations between a tribe and the state or federal government concerning tribal sovereignty or gaming on tribal land.
8. If a Native American Indian burial ground is discovered, the Department of Natural Resources shall as soon as possible provide notice to the Native American Indian Affairs Commission. If Native American Indian human remains are removed from a burial ground, the department shall provide to the Native American Indian Affairs Commission any written findings or reports that result from the analysis and study of the human remains and written notice to the Native American Indian Affairs Commission that the analysis and study of the human remains are complete. After receiving written notice as required in the previous sentence, the Native American Indian Affairs Commission shall make recommendations to the department regarding the final disposition of the Native American Indian human remains.
9. In order to carry out its work, the commission shall meet no fewer than four times per year. Its meetings shall be public and advertised in an effort to maximize participation by affected populations in the commission's deliberations.
10. The commission shall report on its activities to the Governor at least annually.
11. Executive Order 97-24, which created the Native American Council, is revoked.

IN TESTIMONY WHEREOF, I, Frank O'Bannon, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 25th Day of June, 2003

Frank O'Bannon, Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-18

FOR: DECLARING A DISASTER EMERGENCY IN THE STATE OF INDIANA DUE TO SEVERE STORMS FLOODING.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, a series of severe storms swept through the northern two-thirds of Indiana commencing on July 4, 2003 and are continuing; and

WHEREAS, record flood levels have been reported on numerous rivers and streams; and

WHEREAS, the severe weather caused extensive damage to homes, businesses and public facilities over much of Indiana; and

WHEREAS, at least three lives were lost to these storms; and

WHEREAS, all state resources available are being directed to assist victims of this intemperate weather;

NOW, THEREFORE, I, Frank O'Bannon, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby

DECLARE, a state of disaster emergency exists in Central and Northern Indiana; and

ORDER the state Emergency Management Agency, having already implemented the State Emergency Plan, to provide needed emergency services to the damaged areas of Indiana affected by the storms and to coordinate assistance with appropriate federal and state agencies.

This declaration of disaster emergency was in effect beginning July 4, 2003, and continues.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of Indiana on this 8th day of July 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-19

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, FRANKLIN EARL PATTERSON, AKA: BUDDY EARL PATTERSON was convicted in Delaware County Circuit Court on April 3, 1974, and was sentence to a term of 1-10 years for Theft, suspended.

WHEREAS, the petitioner has earned the confidence and support from his peers in the community; and

WHEREAS, the petitioner has had no previous criminal history and has remained crime free for over 29 years; and

WHEREAS, the petitioner has several letters of recommendation to grant a pardon; and

WHEREAS, the petitioner has been recently elected as a Madison County Councilman and desires a pardon to be able to serve his term; and

the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW, THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to FRANKLIN EARL PATTERSON, AKA: BUDDY EARL PATTERSON.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 14th day of August 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-20

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, THOMAS JACKSON, was convicted on Commission of a Felony While Armed with a Deadly Weapon on September 9, 1977, and was sentence to 10 years, suspended, and 1 year of weekends served in the Madison County Jail and probation.

WHEREAS, the petitioner has been very involved in his community, founded Youth Need Prime Time, which he is Executive Director of and has been a positive role model and spokesman for this organization; and

WHEREAS, the petitioner has a strong reputation as a community leader in the city of Anderson, Indiana, and Madison County where he was recently elected as a Madison County Councilman; and

WHEREAS, the petitioner has numerous letters and testimonials of support for recommendation to grant a pardon; and

WHEREAS, the petitioner requests a pardon "to erase my past, help my future and to continue as I have been doing for the past 17 years, letting young people know that crime does not pay and illustrate though positive life styles that your past can be rectified."

the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Frank O'Bannon, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to THOMAS JACKSON.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 14th day of August 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-21

FOR: DECLARING A DISASTER EMERGENCY IN THE STATE OF INDIANA DUE TO SEVERE STORMS AND FLOODING

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, a series of severe storms swept through the North Central, Central and South Central parts of Indiana commencing on August 28, 2003, and are continuing; and

WHEREAS, flooding was reported in numerous areas that had never experienced floodwaters; and

WHEREAS, many roads in North Central Indiana were made impassable, several water rescues were necessitated and hundreds of homes were affected by flood waters and:

WHEREAS, Central Indiana recorded a record deluge in a single day; and

WHEREAS, the highest river levels since 1913 are expected in South Central Indiana as waters from flooded land continues to flow into those rivers; and

WHEREAS, at least one life was lost to these storms; and

WHEREAS, all state resources available are being directed to assist victims of this intemperate weather;

NOW, THEREFORE, I, Frank O'Bannon, by virtue of the power vested in me as Governor of the State of Indiana, do hereby

DECLARE, a state disaster emergency exists in North Central, Central and South Central Indiana; and

ORDER the state Emergency Management Agency, having already implemented the State Emergency Plan, to provide needed emergency services to the damaged areas of Indiana affected by the storms and to coordinate assistance with appropriate federal and state agencies.

This declaration of disaster emergency was in effect beginning August 28, 2003, and continues.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 2nd day of September 2003.

BY THE GOVERNOR: Frank O'Bannon
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-22

FOR: THE CREATION OF THE NATIVE AMERICAN INDIAN AFFAIRS COMMISSION

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, there continues to be a need for a forum for the discussion of issues pertaining to Native American citizens of Indiana, their traditions, beliefs, values, and ideas; and

WHEREAS, the Native American Council, created by Executive Order 97-24, has provided that forum in the past; and

WHEREAS, the General Assembly enacted SEA 337 in 2003 to establish a Native American Indian Affairs Commission to study problems common to Native Americans in Indiana and to make recommendations to relevant governmental bodies regarding issues of health, employment, culture, economic development, Native American archaeological sites, and other matters; and

WHEREAS, SEA 337 was vetoed because, as drafted, it restricted participation to members of federally recognized tribes, thereby inadvertently excluding significant groups of Native Americans in Indiana.

NOW THEREFORE, I Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana by the Constitution and laws of this state, do hereby **ORDER** that:

1. The Native American Indian Affairs Commission is established.
2. The commission consists of seventeen (17) voting members and (2) nonvoting members appointed by the Governor. The voting members of the commission consist of the following:
   (a) Seven (7) Native American Indians;
   (b) Two (2) Native American Indians who have knowledge in Native American traditions and spiritual issues;
   (c) The commissioner of the Department of Correction or the commissioner's designee;
   (d) The commissioner of the Commission for Higher Education or the commissioner's designee;

(e) The commissioner of the State Department of Health or the commissioner's designee;
(f) The secretary of the Office of Family and Social Services or the secretary's designee;
(g) The director of the Department of Natural Resources or the director's designee;
(h) The state Superintendent of Public Instruction or the superintendent's designee;
(i) The commissioner of the Department of Workforce Development or the commissioner's designee;
(j) The director of the Indiana Historical Bureau or the director's designee.

One of the voting members of the commission, selected by the Governor, shall serve as chairperson. The nonvoting members of the commission consist of the following:

(a) One (1) members of the House of Representatives appointed by the speaker of the House of Representatives.
(b) One (1) member of the Senate appointed by the president pro tempore of the Senate.

3. As used in this Executive Order, "Native American Indian" means an individual who is at least one (1) of the following:

(a) An Alaska native as defined in 43 U.S.C. 1602(b);
(b) An Indian as defined in 25 U.S.C. 451b(d);
(c) A native Hawaiian as defined in 20U.S.C. 7912(1); or
(d) A person who has demonstrated membership in a tribe that:
i. is located in Indiana; and
ii. has established documented historical recognition.

Indiana associations that represent Native American Indians may nominate individuals for the commission.

4. The affirmative votes of at least nine (9) members of the commission are required for the commission to take any official action, including public policy recommendations and reports.

5. The Department of Workforce Development and Department of Natural Resources shall provide staff and administrative support for the commission.

6. The commission shall study issues common to Native American Indian residents of Indiana in the areas of employment, education, civil rights, health, and housing. The commission may make recommendations to appropriate federal, state, and local governmental agencies concerning the following:

(a) Health issues affecting Native American Indian communities, including data collection, equal access to public assistance programs, and informing health officials of cultural traditions relevant to health care;
(b) Cooperation and understanding between Native American Indian communities and other communities throughout Indiana;
(c) Cultural barriers to the educational system, including barriers to higher education and opportunities throughout Indiana;
(d) Inaccurate information and stereotypes concerning Native American Indians, including the accuracy of educational curriculum;
(e) Measure to stimulate job skill training and related workforce development, including initiatives to assist employers to overcome communication and cultural differences;
(f) Programs to encourage the growth and support of Native American Indian owned businesses;
(g) Public awareness of issues affecting the Native American Indian communities;
(h) Issues concerning preservation and excavation of Native American Indian historical and archeology sites, including reburial of native American Indians; and
(i) Measures that could facilitate easier access to state and local governmental services by Native American Indians.

The commission should examine whether the problems and solutions to the matters listed above differ as between Native American Indians residing in Indiana who are members of federally recognized tribes and those who are not members of federally recognized tribes. It should also examine whether and how the problems and solutions are unique to Native American Indians residing in Indiana as compared with other groups in the population.

7. The commission may not study or make recommendations regarding negotiations between a tribe and the state or federal government concerning tribal sovereignty or gaming on tribal land.

8. If a Native American Indian burial ground is discovered, the Department of Natural Resources shall as soon as possible provide notice to the Native American Indian Affairs Commission. If Native American Indian human remains are removed from a burial ground, the department shall provide to the Native American Indian Affairs Commission any written finding or reports that result from the analysis and study or the human remains and written notice to the Native American Indian Affairs Commission that the analysis and study of the human remains are complete. After receiving written notice as required in the previous sentence, the Native American Indian Affairs Commission shall make recommendations to the department regarding the final disposition of the Native American Indian human remains.

9. In order to carry out its work, the commission shall meet no fewer that four times per year. Its meetings shall be public and advertised in an effort to maximize participation by affected populations in the commission's deliberations.

10. The commission shall report on its activities to the Governor at least annually.
11. This Executive Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-23

FOR: CONTINUATION OF THE GOVERNOR'S PLANNING COUNCIL FOR PEOPLE WITH DISABILITIES

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, disability will occur at some point in the lives of most people or in the lives of their family members; and

WHEREAS, people with disabilities are people first with capabilities, competence, personal and community needs and preferences; and

WHEREAS, families, neighbors, co-workers and friends can play a central role in enhancing the lives of people with disabilities when appropriate support and opportunities can be made available; and

WHEREAS, such support and opportunities are increasingly available in communities across Indiana; and

WHEREAS, people with disabilities deserve to fully participate in the economic, social, civic and spiritual life of the community; and

WHEREAS, the experience and understanding of all citizens is strengthened through this full participation; and

WHEREAS, since 1970, the Governor's Planning Council for People with Disabilities has developed plans to promote positive attitudes, support and changes in the system of service delivery; and

WHEREAS, the Council has striven to ensure the presence of a unified voice for people with disabilities within state government.

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as the Governor of the State of Indiana, do hereby order that:

1. The Governor's Planning Council for People with Disabilities is reestablished and continued.
2. The Council's responsibilities will be to:
   (a) carry out the mandates and mission as established under the Developmental Disability Assistance and Bill of Rights Act;
   (b) provide leadership in the implementation of the federal Americans with Disabilities Act;
   (c) promote and encourage necessary changes in public policies that call for the independence, productivity and integration into society of all people with disabilities, and make recommendations to the Governor, Legislature, State and local agencies and the citizens of the State of Indiana regarding disability issues;
   (d) provide grants to encourage the development and implementation of these policies and programs that promote the efficient delivery of services to people with disabilities;

(e) develop and implement three-year plans in accordance with, but not limited to, P.L.101-496;

(f) promote a network of community-based citizen groups in an effort to engage communities in activities which support the mission of the Council;

(g) monitor, evaluate and assist in the coordination of the service delivery system in Indiana that serves people with disabilities;

(h) provide individuals and organizations with information, programs and recognition that promote positive attitudes toward people with disabilities;

(i) receive grants from the federal government and philanthropic foundations and other private sources.

3. The Council shall be composed of not more that thirty-three (33) members. Of the members, at least fifty-one percent (51%) shall be persons with developmental disabilities, or the parents, immediate relatives, or guardians of persons with developmental disabilities. The membership of the Council shall be composed as follows:

(a) the Executive Director of Protection and Advocacy or the Director's Designee; the Executive Director of the University Affiliated Programs or the Director's Designee; the Superintendent of the Department of Education or the Superintendent's Designee; the Director of the Bureau of Developmental Disabilities or the Director's Designee representing the Family and Social Services Administration in its entirety; the Director of the Department of Commerce or the Director's Designee; and the Commissioner of the Department of Health or the Commissioner's Designee.

(b) twenty-seven (27) members to be appointed by the Governor. Of these twenty-seven (27) members, seventeen (17) shall be persons with developmental disabilities or the parents, immediate relatives or guardians or persons with developmental disabilities. Before each is appointed to the Council, each of these seventeen (17) shall have demonstrated an active involvement in the development of disability policy and in advocacy activities on behalf of persons with disabilities.

Of these seventeen (17) members:

(1) five (5) shall be individuals with developmental disabilities.

(2) five (5) shall be parents of children with developmental disabilities or immediate relatives or guardians of adults with mentally impairing developmental disabilities, one of whom is living in or has previously lived in an institution; and,

(3) seven (7) members shall be a combination of persons with developmental disabilities or parents, immediate relatives or guardians of persons with developmental disabilities. Three (3) of these seven (7) shall be graduates of the Partners in Policymaking Program.

(c) Of the remaining ten (10) appointed members who are not required to be persons with developmental disabilities or parents or guardians of persons with developmental disabilities:

(1) two (2) shall have disabilities and represent local community or statewide organizations whose stated mission includes the goals of fostering the productivity, inclusion, and independence of people with disabilities;

(2) two (2) members shall represent businesses, of which one shall employ fifty (50) or fewer employees, and of which one shall employ (50) or more employees. These businesses shall have demonstrated a commitment to implementing the Americans with Disabilities Act, but shall not be engaged in businesses directly serving people with disabilities.

(3) one (1) member shall represent local government.

(4) three (3) members shall represent providers of services of people with disabilities, including: special education programs, independent living centers, community-based programs, health care, and preschool or early intervention programs; and

(5) two (2) members shall represent local community or statewide organizations. These two (2) members need not have disabilities.

4. Members appointed by the Governor shall serve terms of three (3) years, and a member may not serve more than two consecutive terms.

5. Members who are not representatives of state agencies shall be entitled to receive a minimum salary per diem as provided under IC 4-10-11-2.1(b) while performing the duties of their offices. Each member of the Council shall be entitled to the reimbursement of travel expenses and other expensed actually incurred in connection with their duties as provided in state travel rules and in accordance with other applicable law.

6. The Council shall develop and implement policies, procedures, and plans for people with disabilities, which include the developmental disabilities state plan required by the Developmental Disabilities Assistance and Bill of Rights Act.

7. The Council shall prepare, approve and implement a budget using federal funds provided under the Developmental Disabilities Assistance and Bill of Rights Act to finance and implement all programs, projects, and activities including:

(a) conducting such hearings and forums that the Council may determine to be necessary to carry out the duties of the Council.

(b) supervising and evaluating the Executive Director and maintaining sufficient numbers and types of staff, and obtaining the services of professional, consulting, technical, and clerical personnel that the Council determines to be necessary to carry out its functions.

8. The Council shall direct the expenditure of funds for grants, contracts, interagency agreements, and other activities authorized by the approved state plan.
9. The Council shall advocate on behalf of people with disabilities by providing information and advice to state and local officials, the Governor, state legislators, and Congress.
10. The Council shall promote private and public sector partnerships which advance the Americans with Disabilities Act, the Fair Housing Act and other legislation which protects and benefits people with disabilities and their families.
11. The Council shall develop and advocate for the adoption of public polices which will guide and improve the state service system, and which will support the independence productivity, community inclusion and integration of people with disabilities.
12. The Council shall serve as the liaison to the President's Committee on Employment of People with Disabilities, and to the National Council on Disability.
13. The Governor shall appoint the Chairperson of the Council for a term of three years among the members of the Council, and the Chairperson shall serve at the will and pleasure of the Governor.
14. The Council shall work in coordination with the Family and Social Services Administration, and other state agencies with programs affecting persons with disabilities.
15. The Council shall, in accordance with state law, appoint and evaluate the Executive Director. The Executive Director may appoint appropriate staff in accordance with policies of the State Personnel Department.
16. The Council shall establish fiscal management procedures in compliance with the directives of the Indiana State Budget Agency. It shall also comply with any superseding or additional directives of that agency.
17. No funds shall be spent without the approval of a majority of the members of the Council.
18. A majority of the membership shall constitute a quorum for conducting business. The affirmative vote of that same majority of members must be present at the time of voting to transact any business of the Council.
19. The Council shall meet at least 4 times per year.
20. All members of the Council and its employees shall comply with all provisions of the Indiana Ethics Commission and conflict of interest laws, and the Council shall adopt appropriate standard operation procedures addressing ethics and conflicts of interest provisions as applies to its members and employees.
21. This order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-24

FOR: CONTINUATION OF THE INDIANA COMMISSION ON JUVENILE LAW

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the laws governing children in need of services and delinquent juveniles are complicated and sometimes in conflict; and

WHEREAS, the laws governing children in need of services and delinquent juveniles occasionally are at odds with what may be in the best interests of the child; and

WHEREAS, from time to time it is advisable to review and revise the laws; and

WHEREAS, it is desirable to have representatives from other sectors of our society on a commission on juvenile law;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Indiana Commission on Juvenile Law is continued.
2. The Commission shall be composed of no more than 20 persons knowledgeable in juvenile law and the care and custody of children.
3. The Commission shall have as its major purpose to study and propose to the legislature, judiciary, and the Governor revision in the laws governing children in need of services and juvenile delinquents and the law governing their parents, guardians, and custodians. It is believed that the best interests of our children and our citizens are best served by having the laws affecting the component parts of the juvenile justice system studied as a whole rather than as separate units.
4. The Commission consists of the following members appointed by and serving at the pleasure of the Governor:
   (a) Two (2) members of the house of representatives, who may not be members of the same political party, recommended by the speaker of the house of representatives;
   (b) Two (2) members of the senate, who may not be members of the same political party, recommended by the president pro tempore of the senate;
   (c) One (1) member representing the Indiana prosecuting attorneys council with expertise in juvenile law;
   (d) One (1) member representing the Indiana public defenders council with expertise in juvenile law;
   (e) One (1) member representing the Indiana judicial conference having responsibility for juvenile law recommended by the chief justice of the Indiana Supreme Court;
   (f) One (1) judge or justice of a court having appellate jurisdiction over juvenile law cases recommended by the chief justice of the Indiana Supreme Court;
   (g) The secretary of the Indiana family and social services administration or a designee;
   (h) The commissioner of the department of correction or a designee;
   (i) The director of the criminal justice institute or a designee;
   (j) One (1) person affiliated with a non-governmental organization that addresses delinquency and juvenile justice issues;
   (k) One (1) attorney licensed to practice law in Indiana who is a member of the Indiana State Bar Association's Committee on Civil Rights for Children, or, who has otherwise demonstrated an interest or expertise in juvenile law;
   (l) One (1) representative of a law enforcement agency;
   (m) The chairperson of the Juvenile Justice and Delinquency Prevention Advisory Group or a designee;
   (n) One (1) representative of a probation department;
   (o) One (1) person who has been under the jurisdiction of a juvenile court within the past ten (10) years;
   (p) One (1) parent, guardian, or custodian of a person who has been under the jurisdiction of a juvenile court within the past ten (10) years; and
   (q) Two (2) citizens who have a special interest or expertise in juvenile justice.
5. The chairperson, vice-chairperson and secretary shall be appointed by and serve at the pleasure of the Governor.
6. Those persons already appointed to the Commission shall continue in office under this Order.
7. The Indiana criminal justice institute shall staff the Commission and provide administrative support. The institute shall seek funding from grants or other alternatives to state general funds to support the Commission.
8. The legislative services agency may provide support for bill drafting and fiscal analysis upon request of a legislative member of the Commission.
9. Each member of the Commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.
10. Each member of the Commission who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.
11. Each member of the Commission who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council.
12. The majority of the members appointed to the Commission shall constitute a quorum. The affirmative votes of a majority of the members appointed to the Commission are required for the Commission to take action on any measure, including final reports.

13. The Commission may delegate to any one or more of its members or agents such powers and duties as it may deem proper.
14. This Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-25

FOR: CONTINUATION OF THE GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, there is a need for more men, women and children in Indiana to engage in regular physical activity; and

WHEREAS, regular physical activity provides numerous benefits to the health and well-being of persons of all ages; and

WHEREAS, regular physical activity can help to prevent health problems such as coronary heart disease, hypertension, osteoporosis, obesity, and mental health problems; and

WHEREAS, regular physical activity may also reduce the incidence of stroke and may help to maintain the functional independence of the elderly; and

WHEREAS, school-aged youth can also benefit from a healthy lifestyle, characterized by fitness activities and the avoidance of drugs and alcohol; and

WHEREAS, increased awareness of the health benefits of regular physical activity and increased access to physical and social environments conducive to physical activity, will encourage people to adopt more active lifestyles;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Governor's Council on Physical Fitness and Sports is reestablished and continued.
2. The Council shall coordinate and promote public and private efforts in physical activity and health in order to encourage healthy lifestyles for persons of all ages.
3. The Council shall recommend to the Governor guidelines, programs, and activities related to physical activity and health.
4. The Council shall consist of not more than fifteen (15) members to be appointed by and serve at the pleasure of the Governor. These members shall represent a diversity of interests relating to fitness and sports in Indiana. The Commissioner of the Indiana State Department of Health shall be a standing member of the Council.
5. Each member of the Council shall be appointed to a two-year term. In the event of a vacancy arising on the Council, for any reason, the Governor shall appoint a new member to serve the unexpired term.
6. The Governor may appoint to the Council an honorary chairperson for a term of two years. An honorary chairperson may not vote on Council business.
7. The Council may, by majority vote, form task forces when necessary to study and make recommendations regarding matters before the Council. Task force participants, who do not otherwise hold lucrative state offices, may be reimbursed for their actual expenses incurred on Council business in accordance with state law and with the policies of the Department of

Administration and the State Budget Agency. Members of the Council may be reimbursed for their actual expenses incurred on Council business in accordance with state law and with the policies of the Department of Administration and the State Budget Agency.
8. The Governor shall appoint the chairperson of the Council from among its members. A vice-chairperson shall be elected from among the members of the Council.
9. Those persons already appointed to the Council shall continue in office under this Order until completion of their respective terms.
10. The Council shall meet at least four (4) times per year.
11. Staff may be assigned to assist the Council in carrying out its duties.
12. This Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-26

FOR: ESTABLISHING AND CLARIFYING THE STRUCTURE OF THE INDIANA STATE EMERGENCY MANAGEMENT AGENCY AND THE INDIANA DEPARTMENT OF FIRE AND BUILDING SERVICES.

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the Indiana General Assembly, in Indiana Code 10-14-3-7 and 10-14-2-1, established the Indiana State Emergency Management Agency, for the purpose of safeguarding the citizens of the State of Indiana from disasters or emergencies.

WHEREAS, the Indiana General Assembly, in Indiana Code 22-12-5-1, established the Indiana Department of Fire and Building Services, for the purposes of disseminating building, equipment and fire safety codes, and safeguarding the citizens of the State of Indiana from the dangers of unsafe buildings, unsafe equipment and fires.

WHEREAS, the Indiana General Assembly, in Indiana Code 10-14-3-7, authorized and provided for coordination of activities relating to disaster prevention, preparedness, response and recovery.

WHEREAS, the Indiana General Assembly, in Indiana Code 10-14-3-7, authorized and provided for protection of the public peace, health and safety, and to preserve the lives and property of the people of the State of Indiana.

WHEREAS, the Indiana State Emergency Management Agency and the Indiana Department of Fire and Building Services are public safety agencies that protect the public peace, health and safety, and preserve the lives and property of the people of the State of Indiana.

WHEREAS, coordination of these agencies' activities allows use of common support personnel, provides budgetary savings and promotes common solutions to common issues.

WHEREAS, it is appropriate and necessary to coordinate the leadership and activities of these public safety agencies.

NOW, THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, pursuant to the powers vested in me by the Constitution and laws of this State, do hereby order the following:

1. The Indiana State Emergency Management Agency and the Indiana Department of Fire and Building Services are hereby authorized to continue their mutual relationship under a common Executive Director.
2. The Indiana State Emergency Management Agency and the Indiana Department of Fire and Building Services are hereby authorized to continue the unification of their support functions, to the extent that this unification of support functions shall allow use of common support personnel, provide budgetary savings and promote common solutions to common issues which may confront the Indiana State Emergency Management Agency and the Indiana Department of Fire and Building Services.
3. This Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-27

FOR: GREENING THE GOVERNMENT

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS.

WHEREAS, state government recycling efforts have significantly reduced the amount of waste generated at state facilities and the related costs of waste disposal; and

WHEREAS, improved pollution prevention and air quality efforts within state government and by state government employees will continue to decrease demand on natural resources to the benefit of all Indiana citizens; and

WHEREAS, environmentally sound policies often create economic, as well as environmental benefits, and

WHEREAS, state government and its employees recognize the importance of setting an example in efforts to improve Indiana's environment; therefore, state government activities should support sustainable products and services;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as the Governor of the State of Indiana, do hereby order that:

I. Steps for Greening the Government

The following requirements are policy for all state agencies. The Departments of Administration (IDOA) and Environmental Management (IDEM) will assist and monitor agencies in pursuit of these goals.

a. State agencies shall appoint a greening coordinator who will be responsible for implementing the following policies, and who will act as their agency's liaison with the Greening the Government Program.

b. All state facilities shall recycle office paper, newspaper, beverage containers, and other items, unless it is determined by Greening the Government Program that implementation is not feasible for a given facility.

c. Agencies shall duplex (double side) all copy and laser printing operations. Exceptions will be made when current technology does not allow for this provision or when specific documents require single-side printing. Whenever possible, new copy and printing machines will have duplex capabilities.

d. Agencies shall purchase re-refined lubricating oil and recycle it through the same vendor in a closed-loop system. This policy does not preclude the future use of bio-based oils.

e. In order to maximize employee participation, IDOA will provide educational resources, tools to measure success, and

minimum standards to ensure employee access to recycling programs. An awards program will recognize agencies and/or employees who implement additional procedures that positively impact the environment.

II. Greening the Government Taskforce

This listed agencies shall appoint representatives to the Greening the Government Taskforce. Agencies required to participate on the taskforce are the Department of Administration, Department of Environmental Management, Department of Commerce, Department of Transportation, Department of Correction, Department of Natural Resources, Family and Social Services Administration, Bureau of Motor Vehicles, State Police, Department of Labor, Personnel Department, and Department of Health.

IDOA and IDEM will each appoint a co-chair to the taskforce. Outside experts may be utilized to provide technical support and assistance to the taskforce.

The taskforce will provide guidance to improve the environmental performance of state operations. Specifically, the taskforce will develop guidelines and aggressive measurable goals for the following tasks, and will establish criteria for IDOA and IDEM to monitor implementation of these guidelines.

a. **Establishing recycling collection at all state facilities.** Taskforce will evaluate the following methods at a minimum; requiring recycling contracts throughout the state, requiring integrated solid waste management contracts, requiring that any state contracted waste hauler also provide recycling services, and requiring that all property lease agreements include recycling pick-up.

b. **Purchasing energy efficient and recycled content items.** Taskforce will evaluate a broad range of items regularly purchased in state operations. Recycled content items shall be of equal or better quality and the price shall be competitive considering current price preference standards.

c. **Enhancing pollution prevention, energy efficiency and source reduction activities in government operations.** These guidelines will include at a minimum: energy efficient operational policies, construction and deconstruction guidelines, lead and mercury assessments for state facilities, lease and vendor requirements and pollution prevention policies for printing, cleaning, painting and vehicle maintenance operations. An alternative fuel vehicle use policy should also be established.

d. **Establishing employee transportation options.** Options to be reviewed shall include at a minimum: telecommuting, alternative work schedules, carpooling, and parking cash out. The benefits of these options, such as a reduction in vehicle miles traveled, reduction in air pollution, reductions in leave time and improved work productivity will be thoroughly addressed by the taskforce.

State agencies will be required to follow this guidance and to report progress annually to the Departments of Administration and Environmental Management.

III. Paperless Office Project

It is hereby recognized that the Government Management Information System Team has developed and continues to implement several state wide operational changes that will reduce paper requirements in state government. These efforts are supported as a significant step toward the waste reduction goals outlined above.

This order is effective September 13, 2003.

IN TESTIMONY WHEREOF, I Joseph E. Kernan set my hand and cause to be affixed the Great Seal of the State of Indiana on this 1st day of October 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-28

FOR: THE ESTABLISHMENT OF THE STATE EMPLOYEE COMMUNITY SERVICE PROGRAM

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, public employment should afford each employee the opportunity to be directly involved in providing services to the public; and

WHEREAS, many administrative work assignments involve employees providing services to the citizens only indirectly; and

WHEREAS, government and tax exempt organizations provide a myriad of direct service programs which benefit the public and require staffing; and

WHEREAS, Senate Enrolled Act 348-1998 authorizes state employees, who volunteer service to another governmental entity or an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, to perform such services during normal hours of employment, subject to certain restrictions.

NOW THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as the Governor of the State of Indian and in accordance with Indiana Code 35-44-4(f)(4), as added by Senate Enrolled Act 348-1998, do hereby order that:

1. Each full time State employee will be allowed leave with pay from the employee's regular assigned duties, not to exceed seven and one-half hours each calendar year, (including calendar year 1998), to voluntarily participate in activities for the benefit of another governmental entity or an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. The voluntary activities must not promote religion or attempt to influence legislation, governmental policy, or elections to public office.
2. To be eligible for leave with pay under this program, the employee must demonstrate that the employee has donated an equivalent amount of the employee's own time to a governmental entity or tax-exempt organization. The donation of the employee's own time must be verified in writing by the governmental entity or tax-exempt organization.
3. To be eligible to participate in this program, the employee must be subject to the jurisdiction of the State Personnel Department or be employed by the State Police Department. Procedures for the administration of this program shall be adopted by the State Personnel Director.
4. Prior approval of the employing agency head, or the agency head's designee, is required for use of is leave. The operational needs of the employing agency shall be considered in determining whether leave requests will be granted.
5. The State Employee Community Service Program shall become effective September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-29

FOR: CONTINUATION OF THE INTEGRATED LAW ENFORCEMENT COUNCIL

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, one of the prime functions of government is to enhance the safety of its citizens by reducing crime; and

WHEREAS, there are thousands of law enforcement officers and hundreds of law enforcement agencies in Indiana; and

WHEREAS, crime fighting and public safety can be enhanced by developing means to integrate the provision of law enforcement services in Indiana; and

WHEREAS, integrating law enforcement can now lower the cost of developing communications systems; and

WHEREAS, pilot programs in populous counties such as Tippecanoe and Allen, and in less populous counties such as Dearborn, have demonstrated the benefits of integrated law enforcement; and

WHEREAS, the Governor's Summit on Integrated Law Enforcement demonstrated that law enforcement agencies in Indiana are prepared to embark on and continue in this type of effort;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Integrated Law Enforcement Council is reestablished and continued. The mission of the Council is to oversee and coordinate the implementation of integrated law enforcement in Indiana.
2. The Governor shall appoint the members of the Council from the following organizations: Indiana Sheriffs Association, Indiana Association of Chiefs of Police, Indiana Fraternal Order of Police, Indiana State Police Alliance, Indiana Black Troopers Association, Indiana Law Enforcement Training Board, and the Federal Bureau of Investigation. The members shall serve for a term of three years. Terms shall be served at the pleasure of the Governor.
3. Those persons already appointed to the Council shall continue in office under this Order until completion of their respective terms.
4. The Integrated Law Enforcement Council shall:
   (a) work with state, county, local and federal law enforcement agencies to develop integrated law enforcement mechanisms, including voice and data communications systems that will enable participating law enforcement agencies to communicate with each other;
   (b) work with state, county, local and federal law enforcement agencies to develop integrated law enforcement practices that maximize the effectiveness of law enforcement by coordinating the use of human and other resources among agencies;
   (c) look to incorporate other public and private entities into the integrated communication system if doing so will increase public safety or reduce the cost of the system; and
   (d) do whatever else will improve the effectiveness of law enforcement through integration.
5. This Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-30

FOR: CONTINUATION OF THE INDIANA CRIMINAL LAW STUDY COMMISSION

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, Indiana's Criminal Code, Corrections Code and Juvenile Code are so interrelated that they actually constitute a system; and there is a continuing need to monitor each area and analyze the impact of a change in one area upon the other; and the procedures necessary to implement each of these codes are also so interrelated that they should be considered as a whole when revision of any one is proposed; and

WHEREAS, under the "Omnibus Crime Control and Safe Streets Act" of 1968, appointment of an Indiana Criminal Law Study Commission is encouraged for the purpose of presenting rational and cohesive proposals for fair and efficient administration of criminal justice in Indiana; and

WHEREAS, it would be beneficial to the State of Indiana to continue such a Commission in an effort to coordinate criminal law, juvenile law and correctional law study;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Indiana Criminal Law Study Commission is reestablished and continued.
2. The Commission shall be composed of no more than twenty (20) persons who, by virtue of their experience and expertise, are knowledgeable in criminal law, juvenile law and correctional law.
3. The Commission shall have as its major purpose to study and propose revisions in criminal procedure and to monitor the Criminal Code, Juvenile Code, and Corrections Code. The Commission shall draft recommendations for legislative or court approval that would ensure just and efficient operation of the criminal justice system. It is believed that simplicity and efficiency are better served by having the law affecting the component parts of the criminal justice system studied as a whole rather than as separate entities.
4. The Commission shall carry out the following specific functions in recommending revisions or changes in the criminal justice system:
   (a) Assure the fundamental human rights of individuals and preserve the public welfare;
   (b) Assure fairness of administration of justice, including the elimination of unjustifiable delay in proceedings;
   (c) Provide for the just determination of every criminal and juvenile proceeding by fair and impartial trial or hearing and an adequate review;
   (d) Seek simplicity in procedure in the criminal justice system; and
   (e) Determine the availability and the desirability of grant assistance as may be provided under the terms of the "Omnibus Crime Control and Safe Streets Act" of 1968.
5. Members of the Commission shall be appointed by and serve at the pleasure of the Governor, with the membership of the Commission to be appointed on a non-partisan basis.
6. Those persons already appointed to the Commission shall continue in office under this Order.
7. The chairperson, vice-chairperson and secretary shall be appointed by and serve at the pleasure of the Governor.
8. The Indiana criminal justice institute shall staff the Commission and provide administrative support.
9. A majority of the membership shall constitute a quorum of the Commission. The affirmative vote of a majority of the membership present at the time of voting shall be required to transact any business of the Commission.
10. Each member shall be entitled to receive as reimbursement all traveling and necessary expenses incurred in the performance of his duties as a member of the Commission in accordance with state law and with travel policy and procedures as may be established by the Department of Administration and the State Budget Agency.
11. The Commission may delegate to any one or more of its members or agents such powers as it may deem proper.
12. This Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-31

FOR: CONTINUATION OF THE INDIANA COMMISSION ON UNIFORM STATE LAWS

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the National Conference of Commissioners on Uniform State Laws provides valuable research and assistance to each of the states in encouraging uniformity between the laws of Indiana and her sister states, and

WHEREAS, past participation in the Conference has been beneficial to the State of Indiana;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order the following:

1. The Commission on Uniform State Laws is continued.
2. The Commission shall be composed of seven members appointed by and serving at the pleasure of the Governor. The Governor shall appoint a chairperson from among the members of the Commission.
3. When any member of the Commission attains the status of Life Member of the National Conference of Commissioners on Uniform State Laws, the Governor may appoint an additional member to the Commission.
4. Members of the Commission shall have the right to participate in the workings of the National Conference of Commissioners of State Laws, subject to funds being made available by the General Assembly.
5. Members of the Commission shall recommend to the General Assembly and the Governor such legislation or other actions as will further promote uniformity of Indiana's laws with laws of other states.
6. This Executive Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-32

FOR: CONTINUATION OF THE GOVERNOR'S COUNCIL ON IMPAIRED AND DANGEROUS DRIVING

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the toll in human life, economic strength and community spirit as a result of impaired and dangerous driving is far too high; and

WHEREAS, vehicular crashes on Indiana roads take hundreds of lives and injure tens of thousands of Hoosiers annually; and

WHEREAS, millions of dollars in workforce strength and property are lost as a result of these crashes; and

WHEREAS, alcohol continues to be the single greatest contributing factor in fatal crashes, and impaired driving continues to be a leading cause of death for Hoosiers age 15 to 24; and

WHEREAS, half of all of our citizens will be in the course of their lifetimes affected by the dangers of an impaired driver; and

WHEREAS, the coordination of efforts to reduce impaired and dangerous driving in Indiana will prevent death and injury on the streets and highways in all parts of our state;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Governor's Council on Impaired and Dangerous Driving is reestablished and continued. The Council shall be affiliated with the Criminal Justice Institute and the Commission for a Drug Free Indiana, and shall be composed of thirty (30) citizens appointed by and serving at the pleasure of the Governor who have, by virtue of their experience and expertise, special knowledge or concern about impaired driving, highway and traffic safety and a commitment to identifying strategies for problem resolution.
2. The Council's mission shall be to study and make recommendations to reduce death and injury on Indiana roadways, and with particular attention to the problem of impaired driving. Such recommendations should be delivered to the office of the Governor and the Indiana Criminal Law Study Commission.
3. A chairperson and vice-chairperson shall be appointed from the membership, to serve at the pleasure of the Governor.
4. All members of the Council shall serve without salary or per diem, except that members of the Council shall be reimbursed in accordance with state law and the policies of the Department of Administration and the State Budget Agency for actual expenses incurred in carrying out their responsibilities as members of the Council, subject to the approval of the Governor.
5. Those persons already appointed to the Council shall continue in office under this Order.
6. This Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-33

FOR: CONTINUATION OF THE INDIANA JUVENILE JUSTICE AND DELINQUENCY PREVENTION ADVISORY GROUP

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the problem of juvenile delinquency continues to be a growing concern of citizens of the State of Indiana; and

WHEREAS, the Congress of the United States enacted the Juvenile Justice and Delinquency Prevention Act to provide a comprehensive, coordinated approach to the problems of juvenile delinquency; and

WHEREAS, under the Juvenile Justice and Delinquency Prevention Act, appointment of an advisory group is required in order for the State of Indiana to receive formula grants from the Office of Juvenile Justice and Delinquency Prevention;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Indiana Juvenile Justice and Delinquency Prevention Advisory Group (State Advisory Group) is reestablished and continued.
2.The Governor shall appoint the members of the State Advisory Group to serve at the pleasure of the Governor for a term of two years. The Governor shall appoint a chairperson from among the members to serve at the pleasure of the Governor.
3. The State Advisory Group shall consist of no fewer than fifteen (15) and no more than thirty-three (33) persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the

administration of juvenile justice.

(a) The State Advisory Group shall include locally elected officials, representatives of local government, and representatives of law enforcement and juvenile justice agencies concerned with delinquency prevention or treatment including welfare, social services, mental health, education, special education, or youth services departments.

(b) The State Advisory Group shall also include:

(i) representatives of private organizations, including those with a special focus on maintaining and strengthening the family unit, those representing parents, those concerned with delinquency prevention and treatment and with neglected or dependent children, and those concerned with the quality of juvenile justice, education, or social services for children;

(ii) representatives of organizations that use volunteers to work with delinquents or potential delinquents;

(iii) representatives of community-based delinquency prevention or treatment programs

(iv) representatives of business groups or businesses employing youth;

(v) youth workers involved with alternative youth programs; and

(vi) persons with special experience and competence in addressing the problems of families, school violence and vandalism, and learning disabilities.

(c) A majority of the State Advisory Group members, including the chairperson, shall not be full-time employees of the federal, state or local government.

(d) At least one-fifth of the State Advisory Group members shall be under the age of 24 at the time of appointment, and at least three (3) members shall have been or shall currently be under the jurisdiction of the juvenile justice system.

4. Those persons already appointed to the State Advisory Group shall continue in office under this Order until completion of their respective terms.

5. The State Advisory Group shall:

(a) advise the Criminal Justice Institute Board of Trustees;

(b) submit to the Criminal Justice Institute, at least annually, recommendations with respect to matters related to its functions, including state compliance with mandates of the Juvenile Justice and Delinquency Prevention Act;

(c) review and comment on all juvenile justice and delinquency prevention grant applications submitted to the Criminal Justice Institute within thirty (30) days of submission of such grant application to the advisory group;

(d) contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system.

6. The State Advisory Group may be given a role in monitoring state compliance with the mandate of the Juvenile Justice and Delinquency Prevention Act and in reviewing the progress and accomplishments of the juvenile justice and delinquency prevention projects funded under the comprehensive state plan.

7. This Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-34

FOR: ESTABLISHING AND CLARIFYING DUTIES OF STATE AGENCIES, FOR ALL MATTERS RELATING TO EMERGENCY MANAGEMENT

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, Under the provisions of I.C. 10-14-3, the *Emergency Management and Disaster Law*, the Governor is charged with the responsibility for ensuring that a comprehensive emergency management program exists that addresses all aspects of emergency and disaster mitigation, preparedness, response and recovery; and

WHEREAS, The State of Indiana, its political subdivisions and citizens are subject to natural disasters on a regular basis including, but not limited to, floods, tornadoes, severe winter storms, earthquakes and droughts; and

WHEREAS, The State of Indiana, its political subdivisions and citizens are subject to disasters caused by humans or technology including, but not limited to, hazardous material spills, widespread contamination, explosions, fires, major power failures and transportation accidents; and

WHEREAS, The State of Indiana, its political subdivisions and citizens could be subject to disasters and emergencies related to our national security, including military attack and terrorist activity; and

WHEREAS, In order to protect the public health, welfare and safety and preserve the lives and property of the people of this State from such emergencies and disasters, the Indiana State Emergency Management Agency, under the provisions of I.C. 10-14-2-4, is charged with the responsibility for coordinating the State's comprehensive emergency management program under the direction of the Governor; and

WHEREAS, It is appropriate and necessary to establish and clarify the duties and responsibilities of all state agencies in order that a comprehensive emergency management program can be successfully implemented,

NOW, THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, pursuant to the powers vested in me by the Constitution and laws of this State, do hereby order the following:

1. The Director of the State Emergency Management Agency, appointed pursuant to I.C. 10-14-2-2, or in the Director's absence the person designated in the State Emergency Operations Plan, is hereby designated to act as the State Coordinating Officer (SCO) for all matters relating to emergency and disaster mitigation, preparedness, response and recovery in this State, and in all matters relating to the Federal Emergency Management Agency.

2. The Governor's Emergency Advisory Group is reestablished and continued. The Governor's Emergency Advisory Group is composed of the following members:

- Superintendent of the Indiana State Police;
- Commissioner of the Indiana Department of Environmental Management;
- Commissioner of the Indiana Department of Transportation;
- Director of the Department of Natural Resources;
- State Fire Marshal;
- Indiana Adjutant General;
- Director of the State Emergency Management Agency;
- Commissioner of the Indiana State Department of Health; and
- Director of the Indiana Counter-terrorism and Security Council.

The Superintendent of the Indiana State Police shall act as chairperson of the Emergency Advisory Group. Each member of the Emergency Advisory Group may designate a deputy to serve as an alternate in the event that the principal member is unavailable to participate in meetings of the Emergency Advisory Group.

3. The Director of the State Emergency Management Agency shall establish and/or continue the Indiana State Hazard Mitigation Council.

(a) The Council shall:

i. Assist in the development, maintenance, and implementation of a state hazard mitigation plan;

ii. Assist in the development, maintenance and implementation of guidance and informational materials to support hazard mitigation efforts of local and state government and private entities;

iii. Solicit, review and identify hazard mitigation projects for funding under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, and sections 553 and 554 of the National Flood Insurance Reform Act, P.L. 103-325; and

iv. Foster and promote, where appropriate, hazard mitigation principles and practices within local and state government and the general public.

(b) The Governor shall appoint members to serve on the Council. Each member of the Council shall serve without compensation or reimbursement for expenses, except that each member of the Council who is a state employee is entitled

to reimbursement from his or her employing agency for traveling expenses and other expenses actually incurred in connection with the member's duties as provided in State policies and procedures.

(c) The Director of the State Emergency Management Agency shall serve as chairperson of the Council.

4. In accordance with I.C. 10-14-3-9 and I.C. 10-14-3-19, the Director of the State Emergency Management Agency shall create and establish mobile support units to reinforce emergency management and disaster organizations in stricken areas and with due consideration of the plans of the federal government and of other states.

5. Whenever the Director of the State Emergency Management Agency exercises his or her authority as the SCO, he or she shall be authorized to use and allocate the services, facilities, equipment, personnel and resources of any state agency, on my behalf, as reasonably necessary in the preparation for, response to or recovery from any emergency or disaster situation that threatens, or has occurred in, this State. Upon the SCO's request for such assistance from a state agency, all officers of that agency shall cooperate to the fullest extent possible. This authority to use and allocate state agency resources extends to their use before a formal declaration of a State Disaster Emergency, as provided for under I.C. 10-14-3-12, and is subject to the Governor's subsequent approval. The cost of providing such services, facilities, equipment, personnel and resources shall be borne by the providing state agency, unless otherwise notified that federal and/or other state funding reimbursement is determined to be available or other payment arrangements are made.

6. In order to expedite emergency response and recovery operations, one or more state agencies may be designated as lead agencies by the SCO for various portions of the overall state response and recovery efforts. All actions of such designated lead state agencies shall be coordinated with, and through, the SCO. Additionally, state agencies may be required to participate in the training, exercising and actual deployment of mobile support teams, such as the state's Forward Response Team.

7. Each agency of state government shall report any threatened or actual occurrences of natural, technological, human-caused or national security emergencies that may require the resources of more than one agency of state government to the Director of the State Emergency Management Agency by the fastest means available. In the event of a threatened or actual occurrence of an emergency or disaster, the Director of the State Emergency Management Agency shall consult with the Governor, or with the Governor's Chief of Staff in the Governor's absence, as soon as possible.

8. In the event of a threatened or actual occurrence of an emergency or disaster, and upon the request of the Director of the State Emergency Management Agency, all agencies of the state government shall promptly send a senior agency official to the State Emergency Operations Center to monitor and analyze information and participate as each agency's representative in performing all tasks relating to the State's response to the incident.

9. In accordance with I.C. 10-14-3-9, the Director of the State Emergency Management Agency shall ensure that the State's Emergency Operations Plan and all accompanying annexes, appendices and standard operation procedures are kept current. Additionally, these plans and procedures are to be developed in coordination with similar plans and procedures developed by the federal government. In order to accomplish these tasks, all state agencies shall assist in the development, preparation and revision of the portions of these plans and procedures that relate to each individual agency's mission, responsibility and capability.

10. Upon the request of the Director of the State Emergency Management Agency, all state agencies shall participate to the fullest extent possible in emergency management training programs, as well as in exercises of the comprehensive emergency management system, or portions thereof.

11. In order to assist the State Emergency Management Agency in carrying out its responsibilities, the following state agencies shall immediately designate one or more senior officials to act as the agency's emergency management coordinator (liaison) for all emergency and disaster matters and shall forward the name of the coordinator to the Governor's Executive Assistant for the State Emergency Management Agency:

State Police
Department of Health
Military Department
Department of Transportation
Department of Natural Resources
Department of Education
State Auditor
Attorney General
Utility Regulatory Commission
Department of Commerce
State Budget Agency
State Board of Accounts
State Board of Animal Health
Civil Rights Commission

Department of Insurance
Department of Labor
Department of Revenue
Public Safety Training Institute
Office of Commissioner of Agriculture
Commodity Warehouse Licensing Agency
Department of Family and Social Services
Department of Fire and Building Services
Department of Personnel
Department of Environmental Management
Department of Workforce Development
Bureau of Motor Vehicles
Department of Correction
Department of Administration
Port Commission
Commission on Public Records
State Office Building Commission
Information Technology Oversight Commission
Housing Finance Authority
Gaming Commission
Department of Local Government Finance

12. All state agencies, departments, commissions, bureaus, institutions and other authorities in state government shall cooperate to the fullest extent possible with the spirit and intent of the Executive Order.
13. This Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-35

FOR: RECOGNITION OF EMPLOYEE ORGANIZATIONS REPRESENTING EMPLOYEES OF THE EXECUTIVE BRANCH AND CONTINUATION OF THE PUBLIC EMPLOYEES RELATIONS BOARD.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, Executive Orders 90-6 and 97-8 provide for efficient management of the Executive Branch of State government in the public interest through orderly, constructive, and cooperative relations among employees, employee organizations, and management, and;

WHEREAS, Executive Orders 90-6 and 97-8 established the Public Employees Relations Board and set forth the responsibilities of the Board, and;

WHEREAS, under Indiana Code 4-1-7.1-3, a new Executive Order is necessary for the Public Employees Relations Board to continue in existence.

NOW, THEREFORE, I, Joseph E. Kernan, pursuant to the power vested in me as Governor of the State of Indiana by the Constitution and the laws of this state, do hereby order the following:

1. This Executive Order applies to all employees of the Executive branch.
2. The Public Employees Relations Board (PERB) is continued in existence within the Executive Branch. The PERB is composed of five (5) members appointed by the Governor and serving for terms of four years. Those persons already appointed to the PERB shall continue in office under this Executive Order until completion of their respective terms.
3. The PERB shall have the power to do the following:
    (a) conduct elections pursuant to this order
    (b) make determinations of exclusive negotiating organization recognition pursuant to this Order
    (c) resolve issues that may arise under this Order
4. In order to effectuate its powers under this Order, the PERB shall issue appropriate guidelines. These guidelines may be promulgated as rules by the State Personnel Department under IC 4-15-1.8-7.
5. Staff assistance is needed by the PERB shall be provided by the Indiana Education Employment Relations Board.
6. A. "Executive Branch" means those agencies under the direct authority of the Governor and those agencies under the direct authority of any other elected state officer electing coverage under Section 15 of this Order.

B. The term does not include any of the following:
    i. bodies corporate and politic;
    ii. state supported universities and institutions of higher education;
    iii. the Budget Agency;
    iv. the National Guard;
    v. the State Personnel Department;
    vi. the PERB;
    vii. the Education Employment Relations Board;
    viii. the State Board of Accounts

7. "Employee" means an individual employed by the Executive Branch, unless the individual is any of the following:
    (a) an intermittent employee;
    (b) a student employee;
    (c) a temporary employee;
    (d) a member of a board or commission;
    (e) a confidential employee;
    (f) a supervisor;
    (g) a managerial employee;
    (h) a patient or resident of a state institution;
    (i) an individual in the custody of the Department of Corrections or any law enforcement agency;
    (j) the chief administrative or executive officer of an agency;
    (k) an attorney whose responsibilities include providing legal advice or performing legal research, a physician, a dentist, or an administrative law judge;
    (l) an individual who performs internal investigations;
    (m) teachers at state institutions whose compensations is determined under any of the following:
        1. IC 11-10-5-4;
        2. IC 16-19-6-7;
        3. IC 12-24-3-4.
8. "Confidential employee" means an employee:
    (a) who works in a personnel office;
    (b) who has access to confidential or discretionary information regarding the formulation of policies or procedures;
    (c) who works in the office of the Governor or any state officer who provides notice pursuant to Section 15;
    (d) whose
        i. functional responsibilities; or
        ii. knowledge;
        concerning employee relations makes the employee's membership in an employee organization incompatible with the employee's duties; or
    (e) who is the personal secretary of the chief administrative or executive officer of an agency.

9. "Managerial employee" means an individual who is:
   (a) engaged predominately in executive and management functions; or
   (b) charged with the responsibility of directing the effectuation of management policies and practices.
10. "Supervisor" means an individual having authority in the interest of the Executive Branch to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment.
11. "Temporary employee" means an individual who is employed in a temporary position for not more than ninety (90) days.
12. "Employee organization" means an organization:
   (a) in which employees participate; and
   (b) that exists for the purpose of dealing with an employer concerning wages, hours, settlement of grievances, and other terms and conditions of employment.
13. "Appropriate unit" means one of the following eleven (11) units:
   1. Labor, trades, and crafts classes, including the following:
      (a) carpenters;
      (b) electricians;
      (c) plumbers;
      (d) print shop workers;
      (e) auto mechanics;
      (f) maintenance workers;
      (g) similar classes.
   2. Administrative and technical support that includes clerical and administrative nonprofessional classes, including the following:
      (a) typists;
      (b) secretaries;
      (c) account clerks;
      (d) computer operators;
      (e) officer service personnel;
      (f) personnel who provide support services to professionals;
      (g) other nonprofessional employees who do not meet the standards of other nonprofessional units.
   3. Regulatory, inspection, and licensure nonprofessionals that include individuals who review public and commercial activities, including the following:
      (a) tax examiners;
      (b) driver's license examiners;
      (c) meat inspectors;
      (d) similar classes.
   4. Health and human services nonprofessional, including the following:
      (a) licensed practical nurses;
      (b) nursing aides;
      (c) mental health attendants;
      (d) therapy aides;
      (e) claims takers;
      (f) similar classes.
   5. Regulatory, inspection, and licensure professional employees empowered to review certain public and commercial activities, including the following;
      (a) revenue auditors;
      (b) bank and insurance examiners;
      (c) public health inspectors;
      (d) similar classes.
   6. Health care professional, including the following:
      (a) registered nurses;
      (b) pharmacists;
      (c) licensed therapists;
      (d) similar classes.

7. Social services and counseling professionals who provide services and benefits to eligible persons, including the following:
   (a) employment and training personnel;
   (b) welfare caseworkers;
   (c) social workers;
   (d) counselors;
   (e) similar classes.
8. Engineering, scientific, and information services professionals, including the following:
   (a) architects;
   (b) chemists;
   (c) geologists;
   (d) civil engineers;
   (e) computer programmers;
   (f) system analysts;
   (g) similar classes.
9. Professional administrative employees with general business responsibilities including the following:
   (a) accountants;
   (b) buyers;
   (c) administrators;
   (d) other professional employees who do not meet the standards of the other professional units.
10. Public safety, protective service workers, and institutional security employees, including the following:
   (a) correctional officers;
   (b) building guards;
   (c) firefighters;
   (d) motor carrier inspectors of the state police department;
   (e) similar classes.
11. Sworn police officers, including the following:
   (a) law enforcement officers of the state police department;
   (b) conservation officers of the department of natural resources;
   (c) excise police of the alcohol and tobacco commission.

14. A. The State Personnel Director shall determine the assignment of each employee, including the employees of state officers electing coverage under Section 15, to an appropriate unit, based on the employee's job classification and position.

B. In determining the appropriateness of the assignment of an employee to an appropriate unit, the following shall be considered:
   i. the principles of efficient administration of government, including limiting the fragmentation of government administrative authority
   ii. the existence of a community of interest among the employees assigned to the bargaining unit;
   iii. the recommendations of the parties involved.

15. A. An elected state officer may elect to include the officer's employees to be subject to the Order by submitting a notice to the PERB.

B. This notice must be consistent with the provisions of this Order and may not include state employees otherwise excluded.

16. An employee organization may be accorded recognition as exclusive negotiating organization for an appropriate unit pursuant to the Order.

17. The State Personnel Director may recognize an employee organization as the exclusive negotiating organization of the members of an appropriate unit when the employee organization has been selected by a majority of the employees voting in an election.

18. An employee organization may request that an election be held by submitting a petition for election to the PERB. The petition must be accompanied by a showing of interest by thirty percent (30%) of the employees of the appropriate unit.

19. Within fifteen (15) days of determination that a valid petition has been submitted, the PERB shall notify interested employee organizations of the pending election.

20. Any interested employee organizations must submit a petition of intervention which must be accompanied by a showing of interest by ten percent (10%) of the employees in the appropriate unit with thirty (30) days of notice of the pending election.

21. An election under this Order shall be held within a reasonable period of time after the determination of a valid petition for election in accordance with guidelines established by the PERB.

22. Recognition of an employee organization shall continue so long as such organization satisfies the criteria of this Order and

subsequent guidelines applicable to recognition; but nothing in this section shall require the PERB to conduct an election in any unit within twelve (12) months after a valid election with respect to such unit had been held pursuant to the provision of this Order.

23. Recognition shall not preclude any employee or group of employees, regardless of employee's organization membership, from bringing matters of personal concern to the attention of appropriate officials with a representative of the employee's own choosing in a grievance proceeding in accordance with applicable rule or established policy.

24. An employee organization recognized as the exclusive negotiating organization of employees of an appropriate unit shall be:

(a) Permitted to speak on behalf of all members of the unit and shall be responsible for representing the interests of all members without discrimination and without regard to employee organization membership; and

(b) exclusively permitted to have organizational membership dues collected by paycheck withholding upon signed written request of employee conforming to law. This privilege shall be immediately revoked by the State Personnel Director in the even of a violation of Section 28(C) of this Order; and

(c) entitled to meet and negotiate with the State Personnel Director or the Director's designee on wages, hours, and working conditions in an effort to reach a settlement subject to the approval of the Governor.

25. A. Employees shall have the right, freely and without fear of penalty or reprisal, to form, join and assist any lawful employee organization, or to refrain from any such activity.

B. The rights described in this section do not extend to participation in the management of an employee organization, or acting as a representative of any organization, where such participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of an employee.

26. Executive Branch management officials retain the right and responsibility:

(a) to direct employees;

(b) to hire, promote, transfer, assign, and retain employees in positions, and to suspend, demote, discharge, or take other disciplinary action against employees;

(c) to relieve employees from duties because of lack of work or for other reasons not prohibited by law;

(d) to maintain the efficiency of the operations entrusted to them;

(e) to determine the methods, means and personnel by which such operations are to be conducted; and

(f) to take whatever actions may be necessary to carry out the statutory and constitutional mission of the Executive Branch.

27. Solicitation of membership, dues, or other internal employee organization business may be conducted only on nonduty hours of the employees concerned.

28. A. The State is entitled to terminate the employment of any employee who participates in, threatens, or encourages any strike, slowdown, work stoppage, or other interruption or interference with the activities of the State, or abstinence in whole or in part from the full, faithful, and proper performance of the employee's duties of employment.

B. An employee dismissed for violation of the above conditions may not be rehired by the Executive Branch for one (1) year following the dismissal.

C. Any employee organization that participates in, threatens, or encourages any strike, slowdown, work stoppage, or other interruption or interference with the activities of the State shall cease to be accorded recognition under this Order and shall cease to receive organizational membership dues collected by paycheck withholding.

D. No recognition or organizational membership dues collected by paycheck withholding shall be accorded any such employee organization for a period of one (1) year.

29. This Order may be revoked or amended by the Governor at any time.

30. The provisions of this Order shall in no way diminish or infringe any rights, responsibilities, powers or duties conferred by the Constitution of the State of Indiana, the Indiana Code, or the Indiana Administrative Code.

31. The existing Settlements with the Unity Team and with AFSMCE Council 62 are extended without interruption and do no expire until superseded by an Executive Order implementing successor agreements. The Settlements do no supersede any existing or future statue, promulgated rule, or other Executive Orders.

32. The Public Employees Relations Board's certification of the election results and the State Personnel Director's recognition of Indiana Professional Law Enforcement Association, AFL-CIO, Local 1041, International Union as the exclusive negotiating organization for Unit 11 are also contained in effect.

33. This Order is effective as of September 13, 2003

IN TESTIMONY WHEREOF, I, Joseph E. Kernan have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-36

FOR: CONTINUING THE OFFICE OF PUBLIC FINANCE

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, through Executive Order 01-17, dated December 3, 2001, Governor Frank O'Bannon initially established the Office of Public Finance for the State of Indiana;

WHEREAS, in establishing the Public Finance Office, Governor O'Bannon recognized the importance to the State of Indiana of formulating and applying policies for the management of bonds, notes and other evidences of indebtedness issued by bodies corporate and politic and instrumentalities of the State;

WHEREAS, it is in the interest of all the citizens of Indiana that the State of Indiana communicate regularly, substantively and in one voice with participants in the financial markets, including credit rating agencies, investment bankers, investors, municipal bond insurers and other credit enhancers and underwriters; and

WHEREAS, it is in the best interest of the State of Indiana to continue the work of the Public Finance Office;

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Office of Public Finance established under the Executive Order 01-17 (the "Public Finance Office") shall be continued.
2. The Public Finance Office shall be managed by the Public Finance Director, who shall be appointed by and serve at the pleasure of the Governor. The Public Finance Director shall also serve as Executive Assistant to the Governor for public finance, debt issuance and management and pension investment matters.
3. The Public Finance Director and employees of the Public Finance Office shall be employed by (and housed with) the Indiana Development Finance Authority or the Indiana Transportation Finance Authority.
4. The Public Finance Director is authorized and directed to establish and manage an annual budget funded through contributions from those issuers of bonds, notes and other evidences of indebtedness and programs that benefit from the work of the Public Finance Office. Such issuers and programs include, but are not limited to, the Indiana Development Finance Authority, Indiana Port Commission, Indiana Recreational Development Commission, State Fair Commission, Indiana State Office Building Commission and Indiana Transportation Finance Authority, and the State Wastewater Revolving Loan Program and State Drinking Water Revolving Loan Program (the "Issuers" and the "Programs"). To the extent the Public Finance Office provides financial advisory services to an Issuer or a Program, the Public Finance Office may be compensated from proceeds of the sale of bonds, notes or other evidences of indebtedness.
5. The Public Finance Director is authorized to hire such staff as may be necessary or appropriate with the prior approval of the Governor.
6. The Public Finance Director shall coordinate, monitor and oversee the debt issuance and management activities of all the Issuers and Programs, including such additional issuers and programs as the Governor may designate or direct from time to time.
7. The Public Finance Director shall also advise the Governor as to debt issuance and management activities and investment matters of all bodies corporate and politic and instrumentalities of the State of Indiana and programs that benefit the State and its citizens or for-profit and non-profit organizations, including issuers of "conduit debt" (the "Special Purpose Issuers" and

the "Special Programs"). Special Purpose Issuers and Special Programs include, but are not limited to, the Board for Depositories, Indiana Development Finance Authority, Indiana Educational Facilities Authority, Indiana Health Facility Financing Authority, Indiana Housing Finance Authority, Intelenet Commission, Indiana Political Subdivision Risk Management Commission, Indiana Secondary Market for Education Loans, Inc., the Indiana White River State Park Development Commission, and the Public Employees' Retirement Fund ("PERF") and Indiana State Teachers' Retirement Fund ("TRF").

8. The Public Finance Director is further authorized and directed to:

(a) in connection with the Issuers and the Programs, retain bond and other financing- and project-related legal counsel (with the approval of counsel to the Governor) and such other financial advisers, investment bankers and project consultants and underwriters as may be necessary or appropriate;

(b) monitor or oversee, as appropriate, all issues of bonds, notes and other evidences of indebtedness which are (or may be) (i) payable from State appropriations, (ii) secured by a State of Indiana moral obligation, or (iii) purchased by or for a State fund, including, but not limited to, any Program or Special Program;

(c) advise and work with the State Budget Director on debt issuance and management and investment matters, including a debt database;

(d) work with the Treasurer of State and the staff of the Indiana Bond Bank on debt issuance and management and investment matters;

(e) advise and work with the Indiana Commission for Higher Education on debt issuance and management and investment matters;

(f) coordinate all communications with and presentations to credit rating agencies, investors and prospective investors with respect to the State of Indiana and its credit and economy, the Issuers and the Programs;

(g) participate in meetings of investment committees and task forces of or for Special Programs, including PERF and TRF;

(h) when designated or otherwise authorized by the Governor, chair the Indiana Transportation Finance Authority and the Board for Depositories and, when requested by the Governor, serve as the Governor's representative on finance and related boards;

(i) recommend qualified candidates for membership on finance and related boards, including those of the Issuers and Programs and the Special Purpose Issuers and Special Programs;

(j) advise Issuers and Programs on good disclosure practices and coordinate and help Issuers and Programs fulfill their current and continuing disclosure obligations;

(k) advise the Governor on legislation that may affect debt issuance and management, investment matters, or outstanding bonds, notes and other evidences of indebtedness issued by or for the Issuers and Programs or the Special Purpose Issuers and Special Programs.

9. All Executive Department agencies, authorities, boards, bodies corporate and politic, commissions, instrumentalities, officers, public corporations and Issuers, Programs, Special Purpose Issuers and Special Programs of the State of Indiana shall cooperate with and provide assistance and information to the Public Finance Director in the implementation of this Executive Order to the fullest extent allowed by law.

10. This Executive Order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of October, 2003.

Joseph E. Kernan, Governor of Indiana

SEAL

ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-37

FOR: SPECIAL SESSION OF THE GENERAL ASSEMBLY TO CONFIRM LIEUTENANT GOVERNOR

WHEREAS, on September 13, 2003, Governor Frank L. O'Bannon died and I, Lieutenant Governor Joseph E. Kernan, took the oath of office to become Governor, as required by Article 5, Section 10(a) of the Indiana Constitution; and

WHEREAS, Article 5, Section 10(b) of the Indiana Constitution requires the Governor in these circumstances to nominate a Lieutenant Governor who shall take office upon confirmation by a majority vote in each house of the General Assembly; and

WHEREAS, if the General Assembly is not in session when the Governor nominates a Lieutenant Governor, Article 5, Section 10(b) requires the Governor to convene a special session of the General Assembly to receive and act upon the nomination.

NOW, THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, do hereby proclaim and call a

SPECIAL SESSION OF THE 113th
INDIANA GENERAL ASSEMBLY

to convene at 11 o'clock a.m., Eastern Standard Time, on October 20, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this day 7th of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-38

FOR: CONTINUATION OF THE INDIANA COMMISSION ON COMMUNITY SERVICE AND VOLUNTEERISM

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the future success and strength of the state rely upon the interaction of Indiana's citizens, communities, and enterprises and;

WHEREAS, volunteerism and community service are increasingly recognized as a means to empower citizens in their own communities and to further state and community problem-solving; and

WHEREAS, community service is an avenue for addressing many of the state's unmet educational, human, public safety, and environmental needs and has revealed new options for enhancing the quality of life for all Indiana residents; and

WHEREAS, the encouragement and commitment of citizens to participate in national and community service renews the ethic of civic responsibility and service in the state and the nation; and

WHEREAS, the National and Community Service Trust Act of 1993 calls for the support and collaboration of federal, state, and local programs and agencies to build on existing organizational structures and expand full-time and part-time service opportunities for all citizens; and

WHEREAS, this Commission will promote volunteerism and citizen participation through the implementation and administration of a comprehensive State plan supporting volunteer organizations and local community programs in need of assistance or funding to fulfill the needs of the communities they serve; and

WHEREAS, the goals of the National and Community Service Trust Act of 1993 are facilitated by the creation of a statewide

organization to promote volunteerism and community service, and to secure and generate support for the fulfillment of the objectives indicated in the State Plan;

NOW,THEREFORE, I, Joseph E. Kernan, by virtue of the authority bested in me as Governor of the State of Indiana, do hereby order that:

1. The Indiana Commission on Community Service and Volunteerism [hereafter "Commission"] is continued.
2. (a) The Commission shall consist of members who have distinguished themselves in their respective fields, and who share the common goals of encouraging community service and volunteer participation as a means of community and state problem-solving; of developing a long-term, comprehensive vision and plan of action for community service initiatives in Indiana; and of serving as the state's liaison to national, state, and local organizations that support its mission.
(b) Members of the Commission shall be appointed on bipartisan basis. Not more than fifty percent of the Commission plus one member may be from the same political party. To the extent possible, it shall be balanced according to race, ethnicity, age, disability, and gender characteristics.
(c) The Governor shall appoint members for three-year terms. Current members shall retain membership until expiration of their terms.
(d) Not more than 25 percent of the Commission members may be employees of state government, though additional state agency representatives may sit on the Commission as non-voting, ex officio members.
(e) Vacancies among the members shall be filled by the Governor to serve for the remainder of the term.
(f) Members of the Commission and the Indiana Youth Commission are entitled to reimbursement for expenses necessarily incurred in performing Commission duties as permitted by guidelines issued by the State Budget Agency.
3. (a) The Commission shall consist of no fewer than 15 and no more than 25 voting members, including:
   (i) an individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth;
   (ii) an individual with expertise in promoting service volunteerism among older adults;
   (iii) a representative of community-based agencies or organizations in the State;
   (iv) the superintendent of the Indiana Department of Education, or the superintendent's designee;
   (v) a representative of local labor organizations in the State;
   (vi) a representative of business;
   (vii) an individual between the ages of 16 and 25, inclusive, who is a participant or supervisor in a volunteer or service program;
   (viii) a representative of local government;
   (ix) the executive director of the Indiana Campus Compact
   (x) a representative of the Corporation for National and Community Service as a non-voting, ex officio member;
(b) In addition, the Commission may include:
   (i) members selected from among local educators;
   (ii) members selected from among experts in the delivery of educational, human, public safety, or environmental service to communities and persons;
   (iii) representative of Native American tribes;
   (iv) members selected from among out-of-school youth or other youth at risk;
   (v) representatives of entities that received assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. Section 4950 et seq.);
   (vi) a youth advisory committee consisting of up to 25 non-voting members between the ages of 12-21. This committee may assist the Commission in decisions regarding issues pertaining to young people.
4. The officers of the Commission, elected by the Commission, shall include:
   (a) Chairperson: It shall be the responsibility of the Chairperson to preside at all meetings of the Commission; to appoint committees, both standing and ad hoc as the Chairperson sees fit; and to authorize and execute the wishes of the Commission.
   (b) Vice-Chairperson: The Vice-Chairperson shall assist the Chairperson, and in the absence of the Chairperson, perform those duties.
   (c) Secretary: The Secretary shall be responsible for the minutes of the meetings of the Commission.
5. The Commission shall:
   (a) develop and annually update a 3-**y**ear plan for community service programs in the State;
   (b) select grantees under guidelines specified by the National Corporation;
   (c) apply to the National Corporation for funding supporting objectives in the State Plan;
   (d) coordinate Commission activities with those of any federally administered service program such as VISTA and Older

American Volunteer Programs to ensure that the services are complimentary, not duplicated;
(e) set priorities for service and volunteerism; and
(f) provide all applicants services required by the National and Community Service Trust Act of 1993.

6. The Commission shall meet at least quarterly. A quorum shall consist of a simple majority of voting members.
7. The Governor shall appoint a full-time Executive Director who shall serve at the pleasure of the Governor. The Executive Director shall report to the Governor's Executive Assistant for Community Service. The Executive Director shall carry out the duties of the Commission and shall also perform other duties relating to community service and volunteerism, as deemed necessary by the Governor or by the Governor's Executive Assistant for Community Service.
8. The Executive Director shall be empowered to employ and/or contract for services necessary to carry out the duties of the Commission. The staff shall administer any pertinent policy and planning activities to assist the Commission in fulfilling its objectives.
9. This order is effective as of September 13, 2003.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 15th day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-39

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, LONNIE COFFING was convicted in the Kosciusko County Circuit Court on October 12, 1981, for the offense of Arson and Illegally Taking a Deer. He received a sentence of 5 years all suspended and ordered to formal probation for one (1) year to pay fine/costs of $1,384.00. He was also convicted in Kosciusko County Superior Court for the offense of Theft on June 30, 1983. He received a 4-year sentence to the Department of Correction, 4-years suspended and placed on probation and ordered to pay all fines and costs. He was also given 21 days in the Kosciusko County Jail. He was discharged from probation on July 23, 1986, with no problems noted; and

WHEREAS, the petitioner has been employed regularly, is a responsible and law-abiding citizen since his discharge from probation on July 23, 1986, and has custody of his three children; and

WHEREAS, the petitioner requests a pardon as he states because of the felony conviction he is unable to obtain a license to go hunting with his son, feels he has demonstrated his ability to fulfill his obligations as a law-abiding citizen and is a responsible member of the community; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to LONNIE COFFING.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 22nd day of October 2003.

BY THE GOVERNOR: Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-40

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, WILLIAM E. GOSS, was convicted in Lake County Criminal Court in 1957. He was convicted for the crime of 2nd Degree Burglary for which he received two (2) years probation; and

WHEREAS, the petitioner has been a long time contributor to the Illinois Sheriff's Association. He has worked the past 20 years as a Special Deputy in Saline County, Harrisburg, Illinois. Petitioner and his wife contribute to their community through their church; and

WHEREAS, the petitioner has several letters of support and recommendation to grant a pardon; and

WHEREAS, the petitioner is now retired, on disability pension and states his reason for a pardon request. "I don't want to die and be considered to be a convicted felon"; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW, THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to WILLIAM E. GOSS.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 22nd day of October 2003.

BY THE GOVERNOR: Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-41

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, JASON LAWS, was convicted in Marshall County Superior Court I on August 4, 1989, for the offense of Conspiracy to Deal in a Schedule III Controlled Substance. He received a sentence of 6 years with 2 years suspended, 2 years probation. The sentence was later modified to time served and the petitioner was released from incarceration (about 5 months early) to complete his 2 years probation; and

WHEREAS, the petitioner reports an extensive history of volunteering for charitable organizations and has become involved with the Order of Malta which has included extensive traveling to a variety of countries on humanitarian missions to deliver medical relief and has realized that his commitment to charitable organizations was a "lifelong calling"; and

WHEREAS, the petitioner has numerous letters of support from friends and associates; and

WHEREAS, the petitioner requests a pardon, as "it was my true belief that by becoming a doctor I could best serve humanity and I want to follow in the footsteps of my father and other physicians like him. My past keeps me from pursuing opportunities that are more challenging"; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to JASON LAWS.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 22nd day of October 2003.

BY THE GOVERNOR: Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-42

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, SANDI P. WARD, was convicted in the St. Joseph County Superior Court on July 13, 1994, for the offense of Assisting a Criminal and was sentence to a 4 year sentence, 2 years probation on Count II. The 4 year sentence was suspended, received 2 years probation with home detention, 120 hours of community service and random drug testing and upon completion of her GED was released from the balance of her probation; and

WHEREAS, the petitioner has shown an active interest in her community and church, considered to be a reliable, honest and sincere individual by her friends and co-workers; and

WHEREAS, the petitioner has numerous letters of support from friends and co-workers; and

WHEREAS, the petitioner requests a pardon to enhance her career and complete her goals in nursing, to continue maintaining a

stable life and live as a more productive citizen; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to SANDI P. WARD.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 22nd day of October 2003.

BY THE GOVERNOR: Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-44

FOR: APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT BETWEEN THE STATE OF INDIANA AND THE UNITY TEAM LOCAL 9212/UAW/AFT

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, constructive and cooperative relationships among state employees and management are in the public interest;

WHEREAS, Executive Order 03-35 reaffirmed Executive Order 90-6, which identified eleven (11) appropriate employee units, provided for election of exclusive negotiating organizations, and permitted the organization elected to negotiate with the designated representative of the Executive Branch;

WHEREAS, in 1990, employees who comprised Units 1, 2, 3, and 10 elected The Unity Team Local 9212/UAW/AFT as their exclusive negotiating organization;

WHEREAS, the Public Employee Relations Board certified The Unity Team Local 9212/UAW/AFT as the exclusive negotiating representative for employees in Unit 1 on October 22, 1990, in Unit 2 on February 7, 1991, and in Units 3 and 10 on October 23, 1990; and

WHEREAS, the negotiating teams for the State and The Unity Team Local 9212/UAW/AFT have submitted for the approval of the Governor a Settlement that has been ratified by the membership of The Unity Team Local 9212/UAW/AFT.

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as the Governor of the State of Indiana, do hereby order that:

1. The Settlement with The Unity Team Local 9212/UAW/AFT is hereby approved and incorporated by reference herein.
2. The Settlement shall be implemented effective November 1, 2003, and shall be administered in accordance with the laws of this State.
3. The Settlement does not supersede any existing or future Statute, Promulgated Rule or Executive Order; however, the Settlement shall be administered and construed, by those State Officers and employees subject to the executive authority of the Governor, as superseding any conflicting policies and work practices.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 28th day of October, 2003

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 03-45

FOR: APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT BETWEEN THE STATE OF INDIANA AND AFSCME COUNCIL 62

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, constructive and cooperative relationships among state employees and management are in the public interest;

WHEREAS, Executive Order 03-35 reaffirmed Executive Order 90-6, which identified eleven (11) appropriate employee units, provided for election of exclusive negotiating organizations, and permitted the organization elected to negotiate with the designated representative of the Executive Branch;

WHEREAS, on October 16, 1990, employees who comprised Units 4, 5, 6, and 7 elected AFSCME Council 62 as their exclusive negotiating organization;

WHEREAS, on October 22, 1990, the Public Employee Relations Board certified AFSCME Council 62 as the exclusive negotiating representative for employees in Units 4, 5, 6, and 7; and

WHEREAS, the negotiating teams for the State and AFSCME Council 62 have submitted for the approval of the Governor a Settlement that has been ratified by the membership of AFSCME Council 62.

NOW, THEREFORE, I, Joseph E. Kernan, by virtue of the authority vested in me as the Governor of the State of Indiana, do hereby order that:

1. The Settlement with AFSCME Council 62 is hereby approved and incorporated by reference herein.
2. The Settlement shall be implemented effective November 1, 2003, and shall be administered in accordance with the laws of this State.
3. The Settlement does not supersede any existing or future Statute, Promulgated Rule or Executive Order; however, the Settlement shall be administered and construed, by those State Officers and employees subject to the executive authority of the Governor, as superseding any conflicting policies and work practices.

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 28th day of October, 2003.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

DEPARTMENT OF STATE REVENUE
Departmental Notice #2
December 1, 2003
Prepayment of Sales Tax on Gasoline

This document is not a "statement" required to be published in the Indiana Register under IC 4-22-7-7. However, under IC 6-2.5-7-14, the Department is required to publish the prepayment rate in the June and December issues of the Indiana Register. The purpose of this notice is to inform each refiner, terminal operator, and qualified distributor known to the Department to be required to collect prepayments of sales tax on gasoline of the "prepayment rate" effective for the next six-month period. A prepayment rate is calculated twice a year by the Department and is effective for the period January 1 through June 30, or, July 1 through December 31, as appropriate.

The prepayment rate is defined by IC 6-2.5-7-1 as the product of:

1) the statewide average retail price per gallon of gasoline (excluding the Indiana gasoline tax, the federal gasoline tax, and the Indiana gross retail tax); multiplied by
2) the state gross retail tax rate [6%]; multiplied by
3) ninety percent (90%); and then
4) rounded to the nearest one-tenth of one cent ($0.001)

The prepayment rate of sales tax on gasoline for the six – (6) month period beginning January 1, 2004, is six and five-tenths cents ($.065) per gallon.

Using the most recent retail price of gasoline available (as required by IC 6-2.5-7-14(b)), the Department has determined the statewide average retail price per gallon of gasoline to be one dollar and twenty and two tenths cents ($1.202). The most recent retail price of gasoline available was based on data contained in the November 2003 Petroleum Marketing Monthly as published by the Energy Information Agency.

The prepayment rates for periods beginning July 1, 1994 are set out below:

Period			Rate Per Gallon
July 1, 1994	to	December 31, 1994	2.9 cents
January 1, 1995	to	June 30, 1995	3.7 cents
July 1, 1995	to	December 31, 1995	3.3 cents
January 1, 1996	to	June 30, 1996	3.3 cents
July 1, 1996	to	December 31, 1996	3.4 cents
January 1, 1997	to	June 30, 1997	4.0 cents
July 1, 1997	to	December 31, 1997	3.9 cents
January 1, 1998	to	June 30, 1998	4.0 cents
July 1, 1998	to	December 31, 1998	2.9 cents
January 1, 1999	to	June 30, 1999	3.0 cents
July 1, 1999	to	December 31, 1999	2.4 cents
January 1, 2000	to	June 30, 2000	3.6 cents
July 1, 2000	to	December 31, 2000	4.6 cents
January 1, 2001	to	June 30, 2001	4.9 cents
July 1, 2001	to	December 31, 2001	4.9 cents
January 1, 2002	to	June 30, 2002	4.9 cents
July 1, 2002	to	December 31, 2002	3.2 cents
January 1, 2003	to	June 30, 2003	5.3 cents
July 1, 2003	to	December 31, 2003	6.6 cents
January 1, 2004	to	June 30,2004	6.5 cents

Indiana Department of State Revenue
Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
PAMELA R. TEDERS
DOCKET NO. 29-2002-0187

PROPOSED ORDER

The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Fraternal Order of Eagles No. 3164 on August 3, 2001. As a result of the investigation, on March 5, 2002, the Petitioner was prohibited from having any involvement with charity gaming in Indiana for a period of three (3) years. The Petitioner protested in a timely manner.

FINDINGS OF FACTS

1) Petitioner protested the Department's proposed actions on March 23, 2002.
2) The Department acknowledged the Petitioner's appeal in a letter dated April 9, 2002.
3) The Department contacted the Petitioner a second time regarding setting a hearing on May 10, 2002.
4) The Department sent Petitioner a letter dated May 21, 2003 regarding the legislative changes that directly affected the procedures governing the administrative hearing.
5) The Department contacted the Petitioner a second time regarding setting a hearing on July 15, 2003.
6) Pursuant to IC 4-21.5-3-1 notice was given to the Petitioner on July 15, 2003 regarding a possible dismissal of her appeal.
7) Petitioner has repeatedly failed to respond to the Department's correspondence.

STATEMENT OF LAW

1) IC 4-21.5-3-24 states, "(a) At any stage of a proceeding, if a party fails to:

(1) file a responsive pleading required by statute or rule;

(2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or

(3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

CONCLUSIONS OF LAW

1) IC 4-21.5-3-24 states, "(a) At any stage of a proceeding, if a party fails to: (1) file a responsive pleading required by statute or rule; (2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or (3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action; the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
2) The Petitioner's failure to respond to the Department's numerous letters is grounds for a proposed dismissal order pursuant to IC 4-21.5-3-24.

PROPOSED ORDER

The Administrative Law Judge orders the following:
Petitioner's appeal is dismissed without prejudice.
1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

_____
Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
NATIONAL KIDNEY FOUNDATION OF INDIANA, INC.
D/B/A NATIONAL KIDNEY FOUNDATION OF INDIANA, INC.,
NORTHWEST CHAPTER
DOCKET NO. 29-2002-0544

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DEPARTMENTAL ORDER

This matter is before the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204. Bruce R. Kolb, Administrative Law Judge, is acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

In lieu of an administrative hearing the Petitioner's counsel requested in a letter dated April 25, 2003 that a decision be rendered based upon the information contained in the Department's files and also contained in a letter of protest dated October 31, 2002. Pursuant to IC 4-21.5 et seq. Petitioner' correspondence shall be treated as a motion for summary judgment (IC 4-21.5-3-23). On May 29, 2003 the Department was given ten (10) days in which to make known its intention to file documents in opposition to the motion. An additional twenty (20) days was granted for any additional filings. The Department responded on June 12, 2003 and stated that it would file its response within 20 days. The Department failed to file any response within the allotted time.

Petitioner, National Kidney Foundation of Indiana, Inc., was represented by Timothy J. Bender of Bingham McHale, 2700 West Tower, 10 West Market Street, Indianapolis, Indiana 46204-4900. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

On April 2, 2003 the Petitioner was notified of additional charity gaming license fees due and owing for the periods ending June 30, 1997 and June 30, 1998. The Petitioner protested in a timely manner.

FINDINGS OF FACT

1) The Petitioner's audit conducted by the Indiana Department of Revenue was completed on November 5, 2001.

2) The audit covered income, sales and use tax. No changes were made to the sales and use tax audit.

3) Charity gaming license fee liabilities for 1997 were created on March 21, 2002 and were subsequently cancelled on March 25, 2002. The Petitioner was then billed again on September 11, 2002.

4) Charity gaming license fee liabilities for 1998 were created on September 6, 2002 and were billed on September 11, 2002.

5) Petitioner's letter to Ms. Catherine McGuckin, CPA, Field Auditor for the Indiana Department of Revenue, dated September 14, 2001, states:

> I received a copy of your September 11, 2001, letter to Mary Kay Hensley. We are very pleased, and appreciate, that the Department of Revenue has decided not to pursue unrelated business income tax and sales/use tax assessments against National Kidney Foundation of Indiana, Inc. d/b/a National Kidney Foundation of Indiana, Northwest Chapter (the 'Corporation').
>
> Your September 11, 2001, letter, also proposes additional license fees based on asserted underreported gross receipts, for the 1996-1997, 1997-1998, and 1998-1999 fiscal years. In addition, your September 11, 2001, letter leaves open the possibility of further penalties.
>
> Because the additional asserted license fees are based upon gross receipts, and because the Corporation timely filed its financial reporting forms, I believe that the statute of limitations should bar any additional license fees from being assessed from the 1996-1997 and the 1997-1998 fiscal years….

6) The Indiana Department of Revenue issued a proposed assessment (AR-80) on September 10, 2002. The Department's billing stated, "A review of your Indiana Bingo tax return(s) for the period ending…has determined that you may owe…"

7) The explanation on the reverse side of the billing states:

> IC 4-32-11-3 PROVIDES 'LICENSE FEE CHARGED TO A QUALIFIED ORGANIZATION THAT RENEWS THE LICENSE MUST BE BASED ON THE TOTAL GROSS REVENUE OF THE QUALIFIED ORGANIZATION FROM ALLOWABLE EVENTS AND RELATED ACTIVITIES". AN AUDIT OF YOUR ORGANIZATION RECORDS INDICATES THAT YOU OWE ADDITIONAL LICENSE FEES.

8) The Department issued the proposed assessments for additional charity gaming license fees and termed the additional money owed as "Original Tax.(Bingo)."

9) The Department cancelled the assessment of the non-existent Bingo Tax on April 2, 2003.

10) The Indiana Department of Revenue Compliance Division notified Petitioner in a letter dated April 2, 2003 of additional charity gaming license fees due and owing for the periods ending June 30, 1997 and June 30, 1998.

11) Petitioner possessed Indiana charity gaming licenses for the periods June 1, 1996; June 1, 1997; and June 1, 1998.
12) Petitioner's accounting periods are May 1, 1996 to April 30, 1997; May 1, 1997 to April 30, 1998; and May 1, 1998 to April 30, 1999.
13) Petitioner's letter dated October 31, 2002, states that they timely filed CG-8s for the periods ending May 1, 1996 to April 30, 1997; May 1, 1997 to April 30, 1998; and May 1, 1998 to April 30, 1999.
14) In lieu of an administrative hearing the Petitioner's counsel requested in a letter dated April 25, 2003 that a decision be rendered based upon the information contained in the Department's files and also contained in a letter of protest dated October 31, 2002.
15) Pursuant to IC 4-21.5 et seq. Petitioner' correspondence shall be treated as a motion for summary judgment (IC 4-21.5-3-23).
16) On May 29, 2003 the Department was given ten (10) days in which to make known its intention to file documents in opposition to the motion.
17) An additional twenty (20) days was granted for any additional filings.
18) The Department responded on June 12, 2003 and stated that it would file its response within 20 days. The Department failed to file any response within the allotted time.

STATEMENT OF LAW

1) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
2) IC 4-21.5-3-23 states, "(a) A party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding. The motion must be supported with affidavits or other evidence permitted under this section and set forth specific facts showing that there is not a genuine issue in dispute…"
3) Form CG-8 (Indiana Annual Bingo and/or Pull Tab License Financial Report). This report must be filed with the Indiana Department of Revenue by the 10th day of the month in which the organization's charity gaming license expires. The report is required to show all financial and accounting activity related to the organization's annual gaming license.
4) The CG-8 states, "The accounting period is a 12-month period; the year-end will always occur one month prior to the end of the gaming period. For example, if your license expires 5/31/98. then your accounting period will be from 5/1/97 to 4/30/98. **This financial statement will reflect your organization's accounting period and not the licensing period.**"
5) IC 4-32-11-3 provides, "The license fee that is charged to a qualified organization that renews the license must be based on the total gross revenue of the qualified organization from allowable events and related activities in the preceding year…"

CONCLUSIONS OF LAW

1) Petitioner timely filed its CG-8s for the periods ending May 1, 1996 to April 30, 1997; May 1, 1997 to April 30, 1998; and May 1, 1998 to April 30, 1999.
2) The Department's form CG-8 states, "The accounting period is a 12-month period; the year-end will always occur one month prior to the end of the gaming period. For example, if your license expires 5/31/98. then your accounting period will be from 5/1/97 to 4/30/98.This financial statement will reflect your organization's accounting period and not the licensing period."
3) The Petitioner has provided sufficient documentation in support of its motion for summary judgment.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:
Petitioner's motion for summary judgment is affirmed.
1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

_____
Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
MS. RAQUEL MEADE
DOCKET NO. 29-2003-0136

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER

An administrative hearing was held on Thursday, May 22, 2003 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Raquel Meade, appeared *Pro Se*. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On March 6, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) and is prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-5.

SUMMARY OF FACTS

1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Brooklyn Volunteer Fire Department (BVFD).

2) On March 6, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) for being an operator or worker at the BVFD's charity gaming event without being a member of the BVFD and also prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years.

FINDINGS OF FACTS

1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Brooklyn Volunteer Fire Department (BVFD). (Record at 6).

2) According to the Department's witness, Criminal Investigation Division report regarding the Brooklyn Volunteer Fire Department (BVFD) found that the organization had, "contracted with …Raquel Meade to conduct bingo July 1, 2000 to June 30, 2001." (Department's Exhibit C).

3) According to the Department's letter dated March 6, 2003, the Criminal Investigation Division (CID) found, "Frances and Raquel Meade approached the BVFD and indicated that she and Raquel could help them raise funds to run the fire department by sponsoring bingo. The bingo games would be the responsibility of the [sic] Frances and Raquel and the BVFD would receive the money from the bingo games while the income from the pull tabs would go to Frances and Raquel for operating the charity gaming event. All responsibility of obtaining the gaming license, ordering the gaming supplies, accounting for the income, obtaining the start up money for the bingo events and payment of all expenses along with finding a bingo hall would be done by Frances and Raquel Meade." (Department's Exhibit C).

4) The Department then notified Petitioner by letter that she was prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years and assessed one thousand dollars ($1,000) for, "being an operator or worker at the BVFD's bingo event without being a member of the BVFD." (Department's Exhibit C).

5) Petitioner was not a member of the BVFD. (Record at 8).

6) Petitioner entered into a negotiated plea agreement with the State of Indiana on May 3, 2002. (Department's Exhibit E).

7) The Petitioner having entered into a negotiated plea agreement with the State of Indiana, plead guilty to the charge of entering into a contract or agreement in violation of IC 4-32-9-15 which is a Class D Felony. (Department's Exhibit E).

STATEMENT OF LAW

1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or 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.

2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).

3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).

4) "It is reasonable…to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).

5) IC 4-32-9-23 provides, "An operator or a worker may not be a person who has been convicted of or entered a plea of nolo contendere to a felony committed in the preceding ten (10) years, regardless of the adjudication, unless the department determines that: (1) the person has been pardoned or the person's civil rights have been restored; or (2) subsequent to the conviction or entry of the plea the person has engaged in the kind of good citizenship that would reflect well upon the integrity of the qualified organization and the department."

6) IC 4-32-9-27 states, "An operator or a worker may not directly of indirectly participate, other than in a capacity as operator

or worker, in an allowable event…"

7) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event."

8) According to IC 4-32-9-29, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."

9) IC 4-32-12-2 states, "The department ***may impose*** upon a qualified organization or an individual the following ***civil penalties***:(1) Not more than one thousand dollars ($1,000) for the first violation.(2) Not more than two thousand five hundred dollars ($2,500) for the second violation.(3) Not more than five thousand dollars ($5,000) for each additional violation." (Emphasis added).

10) IC 4-32-12-1(a) provides in pertinent part, "The Department may suspend… an individual …for any of the following: (1) Violation of a provision of this article or of a rule of the department..."

11) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:

(1) Suspend or revoke the license.

(2) Lengthen a period of suspension of the license.

(3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.

(4) Impose an additional civil penalty of not more than one hundred dollars ($100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

1) On March 6, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) and was prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years.

2) The Petitioner violated IC 4-32-9-15 which is a Class D Felony.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied.

1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).

2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

_____

Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
CRISIS CENTER INCORPORATED
DOCKET NO. 29-2003-0159

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER

An administrative hearing was held on Tuesday, July 22, 2003 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Crisis Center, Inc., was represented by Katrina M. Clingerman, Ice Miller, One American Square, Box 82001, Indianapolis, IN 46282-0002. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On April 2, 2003, the Petitioner was assessed additional charity gaming license fees in the amount of $13,250. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC 4-32-8-5.

SUMMARY OF FACTS

1) The Petitioner is an Indiana nonprofit corporation and conducts licensed charitable gaming events pursuant to IC 4-32.
2) The Petitioner is required to pay charitable gaming fees pursuant to IC 4-32-11.
3) Such fees are calculated and paid based upon Petitioner's total gross revenues from allowable events and related activities during the preceding year.
4) The Indiana Department of Revenue initiated an audit investigation of the Petitioner.
5) On April 2, 2003, the Petitioner was assessed additional charity gaming license fees in the amount of $13,250.

FINDINGS OF FACTS

1) On April 2, 2003, the Petitioner was assessed additional charity gaming license fees in the amount of $13, 250.
2) Petitioner's records as reviewed by the Indiana Department of Revenue showed that they had gross income of $2,424,279 for the year ending 1999, and reported only $1,951,240 to the Department. (Record at 13).
3) Petitioner's records as reviewed by the Indiana Department of Revenue showed that they had gross income of $2,325,817 for the year ending 2000, and reported only $1,845,453 to the Department. (Record at 13).
4) Petitioner's records as reviewed by the Indiana Department of Revenue showed that they had gross income of $2,038,108 for the year ending 2001, and reported only $1,542,533 to the Department. (Record at 14).
5) Petitioner's additional charity gaming license fees owed as a result of underreported gaming fees amounted to $13,250.
6) The Petitioner's witness stated under oath that they did not have any evidence supporting its argument from the years in question. (Record at 25).
7) Petitioner stated that he shipped the games with serial number errors back to the wholesaler, and that he, "had no reason to document." (Record at 25).
8) Department's counsel upon cross-examination asked, "But yet you didn't record the errors on the documents you gave to the auditors. Correct?" Petitioner's witness responded, "Correct." (Record at 28).
9) Petitioner's counsel then went on to state regarding their exhibits, "We would submit that these are submitted as examples. We would not assert that they do come from the audit period. But the Petitioner had no reason to keep examples of this sort from the audit period until the audit had been completed and these issues were raised." (Record at 33).
10) Petitioner's witness was asked by the Administrative Law Judge, "Do you keep track of the serial numbers of the boxes you send back and the replacement boxes that you receive?" The witness responded, "I will beginning after this is concluded because I see where it's necessary, but, no, I have not." (Record at 36).

STATEMENT OF LAW

1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or 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.
2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
4) "It is reasonable…to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
5) IC 4-32-11-1 states, "The department shall charge a license fee to an applicant under this article."
6) IC 4-21-11-3 provides, "The license fee that is charged to a qualified organization that renews the license must be based on the total gross revenue of the qualified organization from allowable events and related activities in the preceding year or, if the qualified organization held a license under IC 4-32-9-6 through IC 4-32-9-10, the fee must be based on the total gross revenue of the qualified organization from the preceding event and related activities…"
7) IC 4-32-9-17 provides in pertinent part, "A qualified organization shall maintain accurate records of all financial aspects of an allowable event under this article. A qualified organization shall make accurate reports of all financial aspects of an allowable event to the department within the time established by the department."

CONCLUSIONS OF LAW

1) On April 2, 2003, based upon an Indiana Department of Revenue audit investigation, the Petitioner was assessed additional charity gaming license fees in the amount of $13,250 for the years 1999, 2000, and 2001.
2) Petitioner, a qualified organization, failed to maintain accurate records of all its financial aspects surrounding the sale of pulltabs for the audit years in question under IC 4-32.
3) Petitioner, a qualified organization, also failed to not only make but keep accurate reports of all financial aspects regarding the sale of its pulltabs for the audit years in question under IC 4-32.
4) Petitioner failed to provide records in support of its appeal for the audit years in question.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

Petitioner's appeal is denied.

1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).

2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____ _____

Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
MS. FRANCES MEADE
DOCKET NO. 29-2003-0202

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER

An administrative hearing was held on Thursday, May 22, 2003 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Frances Meade, appeared *Pro Se*. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On March 6, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) and is prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-5.

SUMMARY OF FACTS

1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Brooklyn Volunteer Fire Department (BVFD).

2) On March 6, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) for being an operator or worker at the BVFD's charity gaming event without being a member of the BVFD and also prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years.

FINDINGS OF FACTS

1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Brooklyn Volunteer Fire Department (BVFD). (Record at 6).

2) According to the Department's witness, Criminal Investigation Division report regarding the Brooklyn Volunteer Fire Department (BVFD) found that the organization had, "contracted with …Frances Meade to conduct bingo July 1, 2000 to June 30, 2001." (Department's Exhibit C).

3) According to the Department's letter dated March 6, 2003, the Criminal Investigation Division (CID) found, "Frances and Raquel Meade approached the BVFD and indicated that she and Raquel could help them raise funds to run the fire department by sponsoring bingo. The bingo games would be the responsibility of the [sic] Frances and Raquel and the BVFD would receive the money from the bingo games while the income from the pull tabs would go to Frances and Raquel for operating the charity gaming event. All responsibility of obtaining the gaming license, ordering the gaming supplies, accounting for the income, obtaining the start up money for the bingo events and payment of all expenses along with finding a bingo hall would be done by Frances and Raquel Meade." (Department's Exhibit C).

4) The Department then notified Petitioner by letter that she was prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years and assessed one thousand dollars ($1,000) for, "being an operator or worker at the BVFD's bingo event without being a member of the BVFD." (Department's Exhibit C).

5) Petitioner was not a member of the BVFD. (Record at 8).

6) Petitioner was listed as an authorized operator on the BVFD annual bingo license for the period of July 1, 200 to June 30, 2001. (Department's Exhibit A).
7) Petitioner entered into a negotiated plea agreement with the State of Indiana on May 3, 2002. (Department's Exhibit E).
8) The Petitioner having entered into a negotiated plea agreement with the State of Indiana, plead guilty to the charge of entering into a contract or agreement in violation of IC 4-32-9-15 with a penalty as a Class A Misdemeanor. (Department's Exhibit F).

STATEMENT OF LAW

1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or 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.
2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
4) "It is reasonable…to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
5) IC 4-32-9-23 provides, "An operator or a worker may not be a person who has been convicted of or entered a plea of nolo contendere to a felony committed in the preceding ten (10) years, regardless of the adjudication, unless the department determines that: (1) the person has been pardoned or the person's civil rights have been restored; or (2) subsequent to the conviction or entry of the plea the person has engaged in the kind of good citizenship that would reflect well upon the integrity of the qualified organization and the department."
6) IC 4-32-9-27 states, "An operator or a worker may not directly of indirectly participate, other than in a capacity as operator or worker, in an allowable event…"
7) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event."
8) According to IC 4-32-9-29, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."
9) IC 4-32-12-2 states, "The department ***may impose*** upon a qualified organization or an individual the following ***civil penalties***:(1) Not more than one thousand dollars ($1,000) for the first violation.(2) Not more than two thousand five hundred dollars ($2,500) for the second violation.(3) Not more than five thousand dollars ($5,000) for each additional violation." (Emphasis added).
10) IC 4-32-12-1(a) provides in pertinent part, "The Department may suspend… an individual …for any of the following: (1) Violation of a provision of this article or of a rule of the department..."
11) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:

(1) Suspend or revoke the license.
(2) Lengthen a period of suspension of the license.
(3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.
(4) Impose an additional civil penalty of not more than one hundred dollars ($100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

1) On March 6, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars ($1,000) and was prohibited from associating with charity gaming activities in the State of Indiana for a period of ten (10) years.
2) The Petitioner violated IC 4-32-9-15 which is a Class D Felony.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:
The Petitioner's appeal is denied.
1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

_____
Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

03970345.LOF

LETTER OF FINDINGS: 97-0345
State Withholding Tax
For the Tax Years 1993 and 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.

ISSUE

I. Withholding Tax Assessments Made Against Taxpayer as Responsible Officer.

Authority: IC 6-3-4-8; IC 6-3-4-8(f); IC 6-3-4-8(g); IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); IC 6-8.1-5-1(c); Indiana Dept. of Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995).

Taxpayer challenges the decision by the Department of Revenue (Department) assigning him personal responsibility for the unpaid withholding taxes incurred by bankrupt corporation for which taxpayer served as a corporate officer and in which taxpayer was a shareholder.

STATEMENT OF FACTS

The Department determined that a bankrupt corporation had failed to forward to the state an amount of employee withholding taxes during 1993 and during 1995. Lacking more specific information necessary to determine the exact amount of withholding taxes due, the Department arrived at an assessment of taxes based on the "best information available."

In addition to notifying the bankrupt corporation, the Department determined that taxpayer – as a "responsible officer" and shareholder of the bankrupt corporation – was individually responsible for the unpaid taxes.

In a letter dated May 4, 1997, and received by the Department on May 7, 1997, taxpayer forwarded a letter stating that the primary lien holder had seized all of the bankrupt corporation's assets including all "valid receivables." According to taxpayer, "It is estimated that the receivables has sufficient funds to cover the IRS and [Department]."

In addition, taxpayer forwarded reconstructed financial records which purported to establish that the specific amount of withholding taxes assessed by the Department was excessive. According to taxpayer, it was necessary to reconstruct the 1993 and 1995 payroll records because, "The original Officer Records were impounded by the Primary Lender." Taxpayer stated that, based on the reconstructed records, "there is quite a difference in what appears to be an estimate by the State of Indiana and the Actual payroll that was paid out."

Taxpayer was notified on January 10, 2001, that he was entitled to explain the basis for his protest at an administrative hearing. The Department received taxpayer's response on October 23, 2001, in which he stated it would be impossible to take part in the administrative process until after July 2002. The Department responded on October 24, 2001 encouraging the taxpayer to further explain the basis for his protest by any means available. The Department offered the opportunity for taxpayer to provide the information either in writing or by telephone. Taxpayer failed to respond.

The Department sent a letter to taxpayer dated September 2, 2003. Taxpayer was again invited to explain the basis for his protest. Again, taxpayer failed to respond. This Letter of Findings is based upon taxpayer's initial 1997 letter and on the information accumulated within the protest file.

DISCUSSION

I. Withholding Tax Assessments Made Against Taxpayer as Responsible Officer.

IC 6-3-4-8 imposes upon employers the responsibility for withholding state income taxes and remitting those taxes to the state. Under IC 6-3-4-8(f), the taxes which have been withheld belong to the State of Indiana. The employer is charged with the duty of "hold[ing] the [taxes] in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided."

The bankrupt corporation was responsible for withholding its employees' income taxes and forwarding those amounts to the state of Indiana. From the language contained in IC 6-3-4-8(f), it is clear that the withheld taxes do not belong to the employer and do not constitute a fungible asset accessible to a company in distress. The withheld taxes are held in "trust for the state of Indiana...." Id.

A. Responsible Officer.

If the corporate employer is unwilling or unable to forward the withheld employee taxes, the corporation's officers may be held responsible for taxes. IC 6-3-4-8(g) provides that, 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."

Pursuant to Indiana Dept. of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind. 1995), three factors are relevant in determining if taxpayer is a corporate officer who had the authority and responsibility for the payment of taxes held in trust for the state. The

court will look to the person's authority within the power structure of the corporation. Where that person is a high-ranking corporate officer within the corporate power structure, that officer is presumed to have had sufficient control over the company's finances to give rise to a duty to remit trust taxes. The presumption may be rebutted by a showing the officer did not in fact have that authority.

Second, the court will look to the authority of the officer as established by the articles of incorporation, bylaws, or employment contract.

Third, the court will consider whether the person actually exercised control over the finances of the business including whether the person controlled the corporate bank account, signed corporate check and tax returns, or determined when and in what order to pay creditors.

In his 1997 protest letter, taxpayer identifies himself as both "secretary" and "shareholder" of the bankrupt corporation. The Department's records confirm that taxpayer was both an officer of the bankrupt corporation and a designated "responsible officer." Taxpayer has not provided information explaining his duties within the bankrupt corporation or the degree of authority taxpayer exercised over the bankrupt corporation's activities. However, it is unrefuted that taxpayer was one of the four officers in the bankrupt corporation and that he owned a share of that business. As the Indiana Supreme Court has stated, "Where that person is a high-ranking corporate officer within the corporate power structure, that officer is presumed to have had sufficient control over the company's finances to give rise to a duty to remit trust taxes." Safayan, 654 N.E.2d at 273.

IC 6-8.1-5-1(c) provides in part that, "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." Under the court's holding in Safayan and IC 6-8.1-5-1(c), taxpayer has the burden of demonstrating that the proposed assessment of withholding taxes was incorrect or that he – as a responsible officer – lacked sufficient control over the bankrupt corporation's finances such that he did not have a duty to assure the bankrupt corporation remitted the unpaid trust taxes.

Taxpayer has provided nothing to refute the presumption that he was a responsible officer of the bankrupt corporation, that he had a duty to assure that the withholding taxes were paid to the state, and that he should not now be held personally responsible for the unpaid taxes.

B. Best Information Available.

The Department determined that the bankrupt corporation had failed to forward withholding taxes due in 1993 and 1995. Because the bankrupt corporation failed to provide any payroll records during those periods, the Department determined the amount of unpaid trust taxes based upon the "best information available." Taxpayer disagreed with the Department's determination and supplied information purporting to establish that "there is quite a difference in what appears to be an estimate by the State of Indiana and the Actual payroll that was paid out."

In plain, straightforward language, IC 6-8.1-5-1(a), authorizes the Department, if it reasonably believes that a taxpayer has not reported the proper amount of tax due, to make a proposed assessment of unpaid tax on the basis of the best information available to the department. Although taxpayer has provided information purporting to refute the Department's conclusion as to the amount of unremitted trust taxes, the information provided is simply taxpayer's own bare, unsubstantiated assertion. Taxpayer has provided nothing which specifically refutes the Department's conclusion or which provides a substantive basis for conclusively determining the bankrupt corporation's 1993 and 1995 payroll.

The Department's proposed assessment, under IC 6-8.1-5-1(b), is deemed to be "prima facie evidence that the department's claim for the unpaid tax is valid." That same section of the Indiana Code goes on to state that "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has failed to meet this burden. He is personally responsible for the unpaid trust taxes.

FINDING

The taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

02970580.LOF

LETTER OF FINDINGS NUMBER: 97-0580
Corporate Income Tax
For the Years 1992-1994

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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax-Imposition of Tax

Authority: IC 6-2.1-2-2 (a)(2), IC 6-8.1-5-1 (b), 45 IAC 1.1-1-3.

The taxpayer protests the imposition of gross income tax.

II. Adjusted Gross Income Tax-Imposition of Tax

Authority: IC 6-3-2-1 (b).

The taxpayer protests the imposition of adjusted gross income tax.

STATEMENT OF FACTS

The taxpayer is an out of state manufacturer of components for automobile parts. The taxpayer sold its product through an Indianapolis sales office to an Indiana automobile parts manufacturer. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax for the tax period 1992-1994. The taxpayer protested the assessment contending that there was inadequate nexus with Indiana to assess gross or adjusted gross income tax. A hearing was held.

I. Gross Income Tax-Imposition of Tax

IC 6-2.1-2-2 (a)(2) imposes the Indiana gross income tax on "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." 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 issue to be determined in this case is whether or not the taxpayer's gross income was derived from activities or sources in Indiana, thus subjecting that income to the Indiana gross income tax.

In the last first year of the audit, the taxpayer had a sales office in Indianapolis. During the last two years of the audit, a related corporation had the sales office in Indianapolis. The sales office was a single point of contact office for the taxpayer's only Indiana customer. Most contact between the customer and the taxpayer was handled through this office.

The Indianapolis office had two persons assigned to it. The salesman is in the office everyday. The office is used after a field call to communicate data and information to others in the taxpayer's organization. The inside salesman makes sure that all orders are entered in the computer system and assures that all orders were shipped to the right place. The office keeps track of shipment by exception which means that if the division cannot ship the product, the division contacts the sales office and the office forwards the message to the Indiana customer. If there is a problem other than quality control, the customer calls the Indianapolis office which coordinates the resolution of the problem.

All purchase orders go to the Indianapolis sales office where they are approved. This information is checked, entered into the computer system and sent to the appropriate manufacturing division. A hard copy of this order is also mailed to the manufacturing division. Specifications and blueprints are brought to the Indianapolis sales office by the salesman and copies are forwarded to the manufacturing division.

The Indianapolis office has all the Indiana customer files. These include orders kept by sequential number of the parts and drawings of all of the customer's parts. The sales office also serves as a repository for literature, bulletins, data sheets, qualification tests, and their results.

The taxpayer also provides engineering services to the customer at the customer's Indiana plant and at the Indianapolis office.

45 IAC 1.1-1-3 explains that gross income subject to the Indiana gross income tax derives from Indiana activities such as the operation of an office in Indiana, the performance of services in Indiana, and other business activities within the state. The taxpayer's activities in Indiana meet this basic test. The gross income derived from these activities is subject to the Indiana gross income tax.

FINDING

The taxpayer's protest is denied.

II. Adjusted Gross Income Tax-Imposition of Tax

DISCUSSION

Pursuant to IC 6-3-2-1 (b), Indiana imposes an adjusted gross income tax on "that part of the adjusted gross income derived from sources within Indiana of every corporation." As discussed in the first section of this Letter of Findings, the taxpayer has significant activities in Indiana. Therefore, it is subject to the tax on the adjusted gross income from those activities.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02970581.LOF

LETTER OF FINDINGS NUMBER: 97-0581
Corporate Income Tax
For the Years 1992-1994

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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax-Imposition of Tax

Authority: IC 6-2.1-2-2 (a)(2), IC 6-8.1-5-1 (b), 45 IAC 1.1-1-3.

The taxpayer protests the imposition of gross income tax.

II. Adjusted Gross Income Tax-Imposition of Tax

Authority: IC 6-3-2-1 (b).

The taxpayer protests the imposition of adjusted gross income tax.

STATEMENT OF FACTS

The taxpayer is an out of state manufacturer of components for automobile parts. The taxpayer sold its product through an Indianapolis sales office to an Indiana automobile parts manufacturer. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax for the tax period 1992-1994. The taxpayer protested the assessment contending that there was inadequate nexus with Indiana to assess gross or adjusted gross income tax. A hearing was held.

I. Gross Income Tax-Imposition of Tax

IC 6-2.1-2-2 (a)(2) imposes the Indiana gross income tax on "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." 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 issue to be determined in this case is whether or not the taxpayer's gross income was derived from activities or sources in Indiana, thus subjecting that income to the Indiana gross income tax.

In the last first year of the audit, the taxpayer had a sales office in Indianapolis. During the last two years of the audit, a related corporation had the sales office in Indianapolis. The sales office was a single point of contact office for the taxpayer's only Indiana customer. Most contact between the customer and the taxpayer was handled through this office.

The Indianapolis office had two persons assigned to it. The salesman is in the office everyday. The office is used after a field call to communicate data and information to to others in the taxpayer's organization. The inside salesman makes sure that all orders are entered in the computer system and assures that all orders were shipped to the right place. The office keeps track of shipment by exception which means that if the division cannot ship the product, the division contacts the sales office and the office forwards the message to the Indiana customer. If there is a problem other than quality control, the customer calls the Indianapolis office which coordinates the resolution of the problem.

All purchase orders go to the Indianapolis sales office where they are approved. This information is checked, entered into the computer system and sent to the appropriate manufacturing division. A hard copy of this order is also mailed to the manufacturing division. Specifications and blueprints are brought to the Indianapolis sales office by the salesman and copies are forwarded to the manufacturing division.

The Indianapolis office has all the Indiana customer files. These include orders kept by sequential number of the parts and drawings of all of the customer's parts. The sales office also serves as a repository for literature, bulletins, data sheets, qualification tests, and their results.

The taxpayer also provides engineering services to the customer at the customer's Indiana plant and at the Indianapolis office.

45 IAC 1.1-1-3 explains that gross income subject to the Indiana gross income tax derives from Indiana activities such as the operation of an office in Indiana, the performance of services in Indiana, and other business activities within the state. The taxpayer's activities in Indiana meet this basic test. The gross income derived from these activities is subject to the Indiana gross income tax.

FINDING

The taxpayer's protest is denied.

II. Adjusted Gross Income Tax-Imposition of Tax

DISCUSSION

Pursuant to IC 6-3-2-1 (b), Indiana imposes an adjusted gross income tax on "that part of the adjusted gross income derived from sources within Indiana of every corporation." As discussed in the first section of this Letter of Findings, the taxpayer has significant activities in Indiana. Therefore, it is subject to the tax on the adjusted gross income from those activities.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02970582.LOF

LETTER OF FINDINGS NUMBER: 97-0582
Corporate Income Tax
For the Years 1992-1994

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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax-Imposition of Tax

Authority: IC 6-2.1-2-2 (a)(2), IC 6-8.1-5-1 (b), 45 IAC 1.1-1-3.

The taxpayer protests the imposition of gross income tax.

II. Adjusted Gross Income Tax-Imposition of Tax

Authority: 15 U.S.C.S.381, IC 6-3-2-1 (b), 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), in Black's Law Dictionary, Seventh Edition, 1999, page 774.

The taxpayer protests the imposition of adjusted gross income tax.

STATEMENT OF FACTS

The taxpayer is an out of state manufacturer of components for automobile parts. The taxpayer made its Indiana sales through the Indianapolis sales office of two related corporations. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax for the tax period 1992-1994. The taxpayer protested the assessment contending that there was inadequate nexus with Indiana to assess gross or adjusted gross income tax. A hearing was held.

I. Gross Income Tax-Imposition of Tax

IC 6-2.1-2-2 (a)(2) imposes the Indiana gross income tax on "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." 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 issue to be determined in this case is whether or not the taxpayer's gross income was derived from activities or sources in Indiana, thus subjecting that income to the Indiana gross income tax.

This situation involves three corporations, the taxpayer and two corporations which sold taxpayer's product to the Indiana customer. Each of the three corporations is a wholly owned subsidiary of a holding company. Each of the holding companies is a wholly owned subsidiary of one corporation. In the last first year of the audit, the taxpayer sold its product through one related corporation's Indianapolis sales office. During the last two years of the audit, the taxpayer sold its product through another related corporation's sales office. However, the sales office never changed. Rather, the corporate structure was changed so that the sales office was part of two different corporations. The sales office was a single point of contact office for the taxpayer's only Indiana customer. Most contact between the customer and the taxpayer was handled through this office.

The Indianapolis office had two persons assigned to it. The salesman is in the office everyday. The office is used after a field call to communicate data and information to others in the taxpayer's organization. The inside salesman makes sure that all orders are entered in the computer system and assures that all orders were shipped to the right place. The office keeps track of shipment by exception which means that if the division cannot ship the product, the division contacts the sales office and the office forwards the message to the Indiana customer. If there is a problem other than quality control, the customer calls the Indianapolis office which coordinates the resolution of the problem.

All purchase orders go to the Indianapolis sales office where they are approved. This information is checked, entered into the computer system and sent to the appropriate manufacturing division. A hard copy of this order is also mailed to the manufacturing division. Specifications and blueprints are brought to the Indianapolis sales office by the salesman and copies are forwarded to the manufacturing division.

If at any time it is considered necessary, the taxpayer's engineer from its out-of-state manufacturing facility comes into Indiana to meet with the sales representatives and employees of the taxpayer's Indiana customer.

The Indianapolis office has all the Indiana customer files. These include orders kept by sequential number of the parts and drawings of all of the customer's parts. The sales office also serves as a repository for literature, bulletins, data sheets, qualification tests, and their results.

The taxpayer also provides engineering services to the customer at the customer's Indiana plant and at the Indianapolis office.

45 IAC 1.1-1-3 explains that gross income is subject to the Indiana gross income tax if it derives from Indiana activities such as the performance of services in Indiana. The United States Supreme Court considered the issue of adequate nexus to subject income from sales in a gross income tax context in Tyler Pipe Industries, Inc. v. Washington State Department of Revenue, 483 U.S. 232 (1987). In that case, Tyler Pipe Industries, Inc. manufactured pipes which it sold in Washington through a Washington sales

office that was not owned by nor were the salesmen employees of Tyler Pipe Industries. The Court found that the daily significant activities of the salespeople in Washington such as calling on customers, establishing and maintaining valuable relationships, and providing Tyler Pipe Industries with information about the needs of the customers created sufficient contact with the state to establish the nexus necessary to submit income from sales in Washington to the Washington gross income tax. This is analogous to the taxpayer's situation in that the Indianapolis sales office is not owned by the taxpayer and the salespeople are not the taxpayer's employees or agents. Even so, the Indiana sales representatives perform substantial activities in the state. These activities create the nexus necessary to subject the taxpayer's Indiana sales to the gross income tax.

FINDING

The taxpayer's protest is denied.

II. Adjusted Gross Income Tax-Imposition of Tax

DISCUSSION

Pursuant to IC 6-3-2-1 (b), Indiana imposes an adjusted gross income tax on "that part of the adjusted gross income derived from sources within Indiana of every corporation." The standard for sufficient nexus to impose the Indiana adjusted gross income tax is different than that for imposing the Indiana gross income tax.

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 department must determine whether the taxpayer's employees' activities in Indiana 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.

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.

As discussed in the first section of this Letter of Findings, the taxpayer has significant activities in Indiana through the sales personnel and sales office of its related corporation. Although the salesmen are not employees of the taxpayer, they are employees of a related corporation. "Independent" is defined in Black's Law Dictionary, Seventh Edition, 1999 at page 774 as "1. Not subject to the control or influence of another. 2. Not associated with another (often larger) entity." In this case, the taxpayer and the corporations managing the sales offices and their employees are both owned by the same corporation. They are, then, by definition subject to the control and influence of the corporation owning all of their holding companies and are clearly associated with the other entities. They have significant dealings with the taxpayer and are subject to the taxpayer's instructions. As such, although they are not in the strict sense employees, they cannot be considered independent or independent contractors either. Even though the taxpayer does not employ the Indiana sales representatives, the taxpayer's own employee engineers come to Indiana to work with the customers on product design and other issues. The taxpayer's activities in Indiana, then, exceed "mere solicitation." Therefore, the taxpayer is subject to the tax on the adjusted gross income from those activities.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02980225.LOF
02980226.LOF
02980227.LOF

LETTERS OF FINDINGS NUMBERS:
98-0225; 98-0226; 98-0227
Corporate Income Tax
Penalty
For 1993, 1994, & 1995

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Corporate Income Tax—Consolidated Filing

Authority: IC § 6-3-4-14(b); 45 IAC 1-1-163; IC § 6-8.1-5-1(b); 45 IAC 15-5-3(8)

Taxpayers protest the disallowance of the consolidated filings.

II. Penalty-Negligence

Authority: IC § 6-8.1-10-2; 45 IAC 15-11-2

Taxpayers protest the 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer A is the parent corporation of two subsidiaries, taxpayer B and taxpayer C. The parent was a wholesale distributor of hydraulic and electrical parts prior to filing Chapter 11 bankruptcy in 1992. Taxpayer B distributed light fixtures and taxpayer C manufactured industrial parts for hydraulic assemblies. Further facts will be added as required.

I. Corporate Income Tax—Consolidated filing

DISCUSSION

Taxpayers protest the proposed assessment of Indiana corporate income tax based on the audit's determination that a consolidated filing including all three entities should be disallowed. The Department has attempted, since the receipt of the protests on these three taxpayers in 1998, to determine the basis of taxpayers' protests of the disallowance of the consolidated filings. A Departmental Hearing officer scheduled numerous hearings with the taxpayers' representative who stated he needed extra time to obtain documents. Scheduled hearings were postponed until the representative could obtain those documents. The documents were received in the Legal Division of the Indiana Department of Revenue on September 5, 2003 and September 8, 2003, by FAX. There was no supporting brief accompanying the documents. A review of the documents indicates that there is no information relevant to the issues protested.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "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 assessment is made." Taxpayers' representative has not made the required showing, based on the documents the Hearing Officer has received. It should be noted that the Hearing Officer sent copies of the Audit Summaries for all three taxpayers to the representative on June 2, 2003. The Summaries clearly identify the issues in the Audit, with the proper citations to Indiana Statutes and Regulations. The documents the representative sent all relate to the bankruptcy, a matter of federal, not state, law. Moreover, the documents do not pertain to IC § 6-3-4-14(b)'s requirement that entities filing consolidated returns must have adjusted gross income "derived from sources within the state of Indiana." The documents do not pertain to 45 IAC 1-1-163's requirement that to file a consolidated return, corporations must be "incorporated or qualified to do business in Indiana." The parent is not an Indiana corporation. The parent included one of the subsidiaries in its returns for 1993 and 1994, but then filed a consolidated return in 1995. The election of a consolidated filing must be on the corporation's initial return. The parent did not do that. Taxpayers' representative argued that the consolidated filing was pursuant to an order from the bankruptcy court, but no such order has been made part of the files, nor has one been produced.

FINDING

Taxpayers' protests concerning the disallowance of the consolidated filings are denied.

II. Penalty

Penalty assessments depend on a number of factors outlined in the statute and regulation cited *supra*, and can be waived based on a showing of sufficient cause:

> 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.

Taxpayers have provided no evidence to support abatement of the negligence penalty.

FINDING

Taxpayers' requests for the abatement of the 10% negligence penalty are denied.

DEPARTMENT OF STATE REVENUE

18990118.LOF

LETTER OF FINDINGS NUMBER 18-990118
FINANCIAL INSTITUTIONS TAX FOR THE PERIOD 1990-96

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the *Indiana Register* and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the *Indiana Register*. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Procedure—Constitutional Challenges—Exhaustion of Administrative Remedies

Tax Procedure—Notice of Proposed Assessment—Notice to Correct Entity—Unitary Groups (All Tax Periods)

Authority: IND. CONST. art. III, § 1; I.R.C. (26 U.S.C.) § 7701(a)(3) (1988) (1994); IC §§ 6-5.5-1-6, -1-18(b), -6-1 and -9-2 (1988 and Supps. 1989-92) (1993); IC § 6-8.1-1-1 (1993 and Supps. 1994-97) (1998); IC § 6-8.1-1-3 (1988) (1993) (1998); IC §§ 6-8.1-1-5.5 and -5-1 (1988 and Supps. 1989-92) (1993) (1998); *Mullane v. Central Hanover Bank & Tr. Co.*, 70 S.Ct. 652 (U.S. 1950); *American Auto Trimming Co. v. Lucas*, 37 F.2d 801 (D.C. Cir. 1930); *Anheuser-Busch, Inc. v. Comm'r*, 40 B.T.A. 1100 (1939); *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996); *Bethlehem Steel Corp. v. Indiana Dep't of State Revenue*, 639 N.E.2d 264 (Ind. 1994); *Middleton Motors, Inc. v. Indiana Dep't of State Revenue*, 380 N.E.2d 79 (Ind. 1978); *Dowd v. Grazer*, 116 N.E.2d 108 (Ind. 1953); *State ex rel. Standard Oil Co. v. Review Bd. of Employment Sec. Div.*, 101 N.E.2d 60 (Ind. 1951); *Owner-Operator Indep. Drivers Ass'n v. State Dep't of Revenue*, 725 N.E.2d 891 (Ind. Ct. App. 2000); *Felix v. Indiana Dep't of State Revenue*, 502 N.E.2d 119 (Ind. Ct. App. 1986); *Van Orman v. State*, 416 N.E.2d 1301 (Ind. Ct. App. 1981); *Associated Ins. Cos. v. Indiana Dep't of State Revenue*, 655 N.E.2d 1271 (Ind. Tax Ct. 1995); *Ball v. Indiana Dep't of State Revenue*, 525 N.E.2d 356, 358-359 (Ind. Tax Ct. 1988) ("*Ball I*"), *aff'd* 563 N.E.2d 522, 524 (Ind. 1990) ("*Ball II*"); 45 IAC § 15-5-1 (1988) (1992) (1996)

The protesting unitary group (hereinafter "the protestant," "the merged unitary group" or "the merged group") contends that the assessments are void because the Department addressed them to a member that was not the member that filed the combined returns for the unitary group.

II. Financial Institutions Tax—Imposition—Transacting Business of Financial Institution in Indiana—Regular Solicitation of Business in or Attribution of Receipts to Indiana (1993-96)

Tax Procedure—Protests—Burden of Proof

Authority: I.R.C. (26 U.S.C.) § 61 (1988) (1994); IC §§ 6-5.5-1-12, -17(a) and (d), -18(a), -2-1(a), -2-4, -3-1(6), -3-4, -3-5, -4-2(1), -4-4 to -4-6, -4-8, -6-9 and -8.1-5-4 (1988 and Supps. 1989-92) (1993); IC § 6-8.1-5-1(b) (1998); *Indiana Dep't of State Revenue v. Fort Wayne Nat'l Corp.*, 649 N.E.2d 109 (Ind. 1995); *State v. Huffman*, 643 N.E.2d 899 (Ind. 1994); *Peabody Coal Co. v. Ralston*, 578 N.E.2d 751 (Ind. Ct. App. 1991); *Porter Mem'l Hosp. v. Malak*, 484 N.E.2d 54 (Ind. Ct. App. 1985); *Canal Square Ltd. Partnership v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801 (Ind. Tax Ct. 1998); *Longmire v. Indiana Dep't of State Revenue*, 638 N.E.2d 894 (Ind. Tax Ct. 1994); *Bullock v. Foley Bros. Dry Goods Corp.*, 802 S.W.2d 835 (Tex. App. 1990); 45 IAC § 15-5-3(b)(8) (2000); 45 IAC §§ 17-2-6(8), -8 and -3-10(b)(6)-(9) (1988 and Supp. 1991) (1992) (1996)

The protestant argues that the Department erred in imposing financial institutions tax (hereinafter "FIT") on three of its members because they did not regularly solicit business in Indiana.

III. Tax Procedure—Adjustments to Federal Returns—Timeliness of Notice to Department (1993)

Authority: I.R.C. (26 U.S.C.) §§ 6511(a), 6513(a) (1988) (1994); IC §§ 6-5.5-6-6(b), -8.1-5-2(f) and –9-1(a) (1993); IC § 33-3-5-11(a) (1998 and Supp. 2002); *Middleton Motors, Inc. v. Indiana Dep't of State Revenue*, 380 N.E.2d 79 (Ind. 1978); *Marhoefer Packing Co. v. Indiana Dep't of State Revenue*, 301 N.E.2d 209 (Ind. Ct. App. 1973); *Salin Bancshares, Inc. v. Indiana Dep't of State Revenue*, 744 N.E.2d 588 (Ind. Tax Ct. 2000); *GasAmerica Services, Inc. v. Indiana Dep't of State Revenue*, 552 N.E.2d 860 (Ind. Tax Ct. 1990); 45 IAC §§ 15-5-7(d) and -9-2 (1992)

The protestant submits that the auditor and the Department erred in denying the protestant the benefit of the adjustments to its 1993 federal income tax return, because it did not report those adjustments in a timely manner.

IV. Financial Institutions Tax—Imposition—Constitutionality—Due Process Nexus (1993-96)

Financial Institutions Tax—Imposition—Constitutionality—Interstate Commerce—Substantial Nexus (1993-96)

Financial Institutions Tax—Imposition—Constitutionality—Interstate Commerce—Fairness of Apportionment and Discrimination (1993-96)

Financial Institutions Tax—Credits—Non-Resident Taxpayers—Constitutionality--Fairness of Apportionment and Discrimination (1993-96)

Authority: IND. CONST. art. III, § 1; IC §§ 6-5.5-1-12, -1-13 and -2-4 to -6 (1988 and Supps. 1989-92) (1993); *Goldberg v. Sweet*, 109 S.Ct. 582 (U.S. 1989); *United States v. Salerno*, 107 S.Ct. 2095 (U.S. 1987); *Armco, Inc. v. Hardesty*, 104 S.Ct. 2620 (U.S. 1984); *Swan & Finch Co. v. United States*, 23 S.Ct. 702 (U.S. 1903); *Burroughs Adding Machine Co. v. Terwilliger*, 135 F2d 608 (6th Cir. 1943); *Miller v. McColgan*, 110 P.2d 419 (Cal. 1941); *Bigelow v. Reeves*, 149 S.W.2d 499 (Ky. 1941); *State v. Sproles*,

672 N.E.2d 1353 (Ind. 1996); *Middleton Motors, Inc. v. Indiana Dep't of State Revenue,* 380 N.E.2d 79 (Ind. 1978); *Dowd v. Grazer,* 116 N.E.2d 108 (Ind. 1953); *State ex rel. Standard Oil Co. v. Review Bd. of Employment Sec. Div.,* 101 N.E.2d 60 (Ind. 1951); *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue,* 672 N.E.2d 91 (Ind. Tax Ct. 1996); *Auburn Foundry, Inc. v. State Bd. of Tax Comm'rs,* 628 N.E.2d 1260 (Ind. Tax Ct. 1994); *Tupelo Garment Co. v. State Tax Comm'n,* 173 So. 656 (Miss. 1937); *State ex rel. Whitlock v. State Bd. of Equalization,* 45 P.2d 684 (Mont. 1935); *Omaha Pub. Power Dist. v. Nebraska Dep't of Revenue,* 537 N.W.2d 312 (Neb. 1995); *TPQ Inv. Corp. v. State ex rel. Oklahoma Tax Comm'n,* 954 P.2d 139 (Okla. 1998); *Keyes v. Chambers,* 307 P.2d 498 (Or. 1957); *Burlington N. R.R. v. Strackbein,* 398 N.W.2d 144 (S.D. 1986); *Stephens v. Vermont Dep't of Taxes,* 353 A.2d 355 (Vt. 1976); *Cudahy v. Wisconsin Dep't of Taxation,* 52 N.W.2d 467 (Wis. 1952); 45 IAC §§ 17-3-7(e) and -8(b) (1988 and Supp. 1991) (1992) (1996)

The protestant contends that the FIT as applied to the three members in question violates due process and the dormant Interstate Commerce Clause because those corporations allegedly have no substantial nexus with Indiana. The protestant also submits that the FIT further violates the dormant Interstate Commerce Clause because IC § 6-5.5-2-4 apportions unfairly and thereby discriminates against interstate commerce. Lastly, the protestant argues that the credit for nonresident taxpayers of IC § 6-5.5-2-6 does not completely cure these alleged defects.

V. Tax Administration—Negligence Penalties (1993-96)—Reasonable Difference of Opinion as to Liability for Tax

Authority: IND. CONST. art. III, § 1; IC § 6-5.5-7-1(a) and -8.1-10-2.1(b) and (d) (1993); *State v. Sproles,* 672 N.E.2d 1353 (Ind. 1996); *Middleton Motors, Inc. v. Indiana Dep't of State Revenue,* 380 N.E.2d 79 (Ind. 1978); *Dowd v. Grazer,* 116 N.E.2d 108 (Ind. 1953); *State ex rel. Standard Oil Co. v. Review Bd. of Employment Sec. Div.,* 101 N.E.2d 60 (Ind. 1951); *Indiana Dep't of State Revenue v. Harrison Steel Castings Co.,* 402 N.E.2d 1276 (Ind. Ct. App. 1980); 45 IAC § 15-11-2(b) and (c) (1992) (1996)

The protestant argues that the Department should abate the negligence penalties for calendar years 1993-95 and the years ending March 31, 1996 and December 31, 1996 because a reasonable difference of opinion exists as to the constitutionality of the tax.

VI. Tax Administration—Negligence Penalties (1990-92)—Reasonable Cause—Merger and Layoff of Compliance Personnel

Authority: IC § 6-5.5-7-1(a) (1988 and Supps. 1989-91); IC § 6-8.1-5-1(b) (1998); IC § 6-8.1-10-2 (1988); IC § 6-8.1-10-2.1 (1988 and Supps. 1991-92); 45 IAC § 15-11-2(b) and (c) (1988) (1992)

The protestant contends that reasonable cause exists to abate the penalty for calendar years 1990-92 due to a merger and attendant layoff of tax compliance personnel that it alleges caused it to fail to timely report certain adjustments to its federal corporate returns to the Department.

SUMMARY OF FINDINGS

The Department denies this protest as to all issues for the reasons set out below in the respective Discussion of each issue.

STATEMENT OF FACTS

The Department audited the protesting entity for financial institutions tax (hereinafter "FIT") for calendar years 1990-96 (hereinafter "the audit period"). From the beginning of 1990 through the end of the first quarter of 1996 that entity was an affiliated group consisting of a parent bank holding company (hereinafter "the original parent" or "the original holding company") and numerous affiliate members. The original parent and its affiliates functioned as a unitary group (see IC § 6-5.5-1-18(a) (1988 and Supp. 1992) (1993) (1998) for the definitions of "unitary business" and "unitary group"), so the Department will hereinafter refer to them as "the original unitary group" or "the original group". On April 1, 1996 a "reverse acquisition" merger occurred (*see generally* 26 C.F.R. (Treas. Reg.) § 1.1502-75(d)(3)(i) (1996)). As a result, the original holding company and the original unitary group were merged into, and became members of, a larger affiliated group also functioning as a unitary group (hereinafter "the acquiring unitary group" or "the acquiring group") headed by another bank holding company (hereinafter "the acquiring parent"). The resulting entity adopted the original holding company's name, and also filed this protest.

Ordinarily the Department would simply refer to a protesting entity as "the taxpayer," or possibly as "the licensee" if the protest in question involves assessment of a license tax. However, among other things, the present protesting entity contends that the Department mailed the Notices of Proposed Assessment for the underlying audit to the wrong taxpayer. Specifically, the protesting entity submits that the Department erroneously sent those Notices to the original parent. The protesting entity argues that instead the Department should have sent the Notices to another member of the original and merged unitary groups that they designated to file the combined Forms FIT-20 (Financial Institution Franchise Tax Return) on their behalves during the audit period. (The Department will hereinafter refer to this member as "the filing member" or "the filer.") To resolve this issue the Department will have to determine who was the taxpayer and who was, or were, the member or members of the merged unitary group to which the Department was legally empowered to send those Notices, as it will discuss under Issue I below. Given this circumstance and the occurrence of the "reverse acquisition" merger, the Department would unnecessarily complicate discussion of the other issues and confuse readers of this letter if it were to refer to the present protesting entity as "the taxpayer." Therefore, to avoid these problems and to promote clarity, the Department in this letter will refer to this entity as "the merged unitary group," "the merged group" or "the protestant."

The original, acquiring and merged groups all filed consolidated federal Forms 1120 (U.S. Corporation Income Tax Return)

during the audit period. All federal returns were filed under the name of the original holding company. As a result of the reverse acquisition the original unitary group filed a final Form 1120 and a final combined Form FIT-20 for the first quarter of 1996. The merged unitary group filed another 1120 and another FIT-20 that reflected the activities of the original group and the original parent for the last three quarters of 1996 and of the acquiring parent and the acquiring unitary group for all of calendar 1996. There was no difference between the companies listed as being members of the original federal affiliated and original Indiana unitary groups, or between those listed as being members of the merged federal affiliated and merged Indiana unitary groups.

However, in the FIT-20s from 1993 through the end of the audit period, the reporting unitary group in question included in the numerator of the apportionment calculation only receipts of affiliate members that the group represented had tangible property or personnel in Indiana. The effect of this action was that the group in question reported Indiana receipts for only the filer and one other member for calendar years 1993-95 and only the filing member for 1996. The reporting group in question excluded from the apportionment numerator the receipts of all members represented as not having property or personnel in Indiana, which constituted all other members of the reported group, including the original and acquiring parents. As justification for this position a short written statement to this effect was attached to each FIT-20 for the 1993-96 reporting periods questioning the constitutionality of unspecified parts of IC § 6-5.5-3-1.

Three of the six issues in this protest arise out of the imposition of FIT on receipts earned during these years by three members of the original group that the merged unitary group alleges fell into this latter category. The Department will refer to these members hereinafter as Members A, B and C. Member A is a corporation chartered in a state other than Indiana and specialized in commercial real estate financing. Members B and C are both national banks. Members A and B were reported as being members of the original or merged unitary group during each reporting period in calendar years 1993-96. Member C joined and was reported as being a member of the original group in calendar year 1995 and was reported as being a member of the reporting group in question on both of the 1996 returns. None of these three members was the filer. All three had their commercial domiciles outside Indiana. None was admitted to do business in Indiana during the audit period according to the on-line records of the Department of Financial Institutions and the Business Services Division of the Secretary of State's office. The field auditor added to the numerator of the apportionment formula receipts that one or more of these members, and others, earned from loans or installment sales primarily secured by tangible property in Indiana, unsecured consumer loans to Indiana debtors, unsecured commercial loan or installment obligation proceeds applied to Indiana, and credit card charges billed to Indiana addresses. The Notices of Proposed Assessment indicate that the bulk of the resulting FIT was imposed on receipts earned during calendar years 1993-95 and the two 1996 return periods.

The auditor also made, and in one case declined to make, adjustments relating to certain omissions relating to tax compliance. The protestant submitted Internal Revenue Service ("IRS") Revenue Agent Reports ("RARs") for calendar years 1990-91, and amended federal corporate income tax returns (Form 1120X) for calendar years 1992-93, for the original unitary group that had not been submitted to the Department before. The 1990-91 RARs and the 1120X for 1992 indicated increases to the original group's federal corporate tax liability, while the 1993 1120X indicated that the federal income of original unitary group was reduced (thereby entitling it to a refund or credit of FIT). The auditor made adjustments to the original group's FIT liability for calendar years 1990-92 based on these returns. However, she declined to do so for calendar year 1993 on the ground that the changes reported on the amended federal return for that year had not been reported to the Department within one hundred twenty (120) days after the modification to the federal return for that year. The only evidence in the audit file of when the merged unitary group notified the Department is an entry in the auditor's progress report (i.e., log) dated March 30, 1998 and documenting a conversation between her and the merged group's successor contact person for the audit. In that conversation the successor contact person indicated that she believed that the 1993 Form 1120X was filed in 1995, which would have been before the merger. The successor contact person represented that she would get back with the auditor if he found any proof that the Department had received timely notice, but never did so. The merged unitary group has not provided any such proof during this protest, nor is there any such proof in the file.

The Department assessed penalties for all years of the audit period for failing to follow the regulations on sourcing of loan, credit interest and fee receipts and for failing to report and pay the tax on such items.

The auditor also submitted the Audit Summary under the name and federal identification number of the original parent. Her reasons for doing so, as stated in the Audit Summary, were twofold. First, the auditor stated that before the FIT was enacted the original unitary group was the same entity that had filed Indiana income tax returns. Second, she noted that the original parent had been the responsible filing member of the original federal consolidated group during the audit period. The Department issued the Notices of Proposed Assessment to the original holding company, rather than to the Indiana filing member, as a result. The original parent, rather than the filing member, submitted this protest. Additional facts will be provided if and as needed under the Discussion of each issue below.

I. Tax Procedure—Constitutional Challenges—Exhaustion of Administrative Remedies

Tax Procedure—Notice of Proposed Assessment—Notice to Correct Entity—Unitary Groups (All Tax Periods)

DISCUSSION

A. INTRODUCTION: INDIANA LAW REQUIRES EXHAUSTION OF ADMINISTRATIVE REMEDIES IF A TAX IS CHALLENGED ON CONSTITUTIONAL GROUNDS.

As the Department will summarize under the Discussion of Issue III below, the protestant has challenged the assessment in this protest on two federal constitutional grounds. For this reason, the Department will discuss at the outset the Indiana law governing the administrative procedure to be followed when a constitutional challenge is made to an assessment of a tax that this Department administers.

The Indiana Supreme Court has held that constitutional analysis is beyond the Department's expertise. *State v. Sproles,* 672 N.E.2d 1353, 1360 (Ind. 1996). Taxpayer claims that a tax statute is unconstitutional on its face in particular are beyond the Department's administrative authority and adjudicative jurisdiction on the additional ground of the Indiana state constitutional doctrine of separation of powers. IND. CONST. art. III, § 1; *Dowd v. Grazer,* 116 N.E.2d 108, 112 (Ind. 1953); *State ex rel. Standard Oil Co. v. Review Bd. of Employment Sec. Div.,* 101 N.E.2d 60, 66 (Ind. 1951). However, it is also well settled that a taxpayer challenging on constitutional grounds a tax statute that the Department administers or a tax that it has levied nevertheless must make that challenge by exhausting, and may not bypass, its statutory administrative remedies before raising it in the Indiana Tax Court. *Sproles,* 672 N.E.2d at 1361, citing, among other opinions, *Felix v. Indiana Dep't of State Revenue,* 502 N.E.2d 119 (Ind. Ct. App. 1986); *Owner-Operator Indep. Drivers Ass'n v. State Dep't of Revenue,* 725 N.E.2d 891, 893-94 (Ind. Ct. App. 2000) (citing *Sproles*). As a matter of procedure the protestant therefore was correct to raise its constitutional issues with the Department initially. The Court of Appeals in *Felix* stated the reasons for the exhaustion requirement as follows:

> [T]he "absolute and indispensible [sic] prerequisite" of [exhausting administrative remedies] "serves to advise the appropriate internal revenue officials of the claims intended to be asserted by the taxpayer, so as to insure an orderly administration of the revenue." *McConnell v. United States* (E.D. Tenn. 1969), 295 F. Supp. 605, 606. Finally, *the requirement of [exhausting administrative remedies] even for a constitutional challenge will afford the Department the opportunity to resolve the matter on nonconstitutional grounds. See Christian v. New York State Department of Labor* (1974), 414 U.S. 614, 622-24, 94 S.Ct. 747, 751-52, 39 L.Ed.2d 38, 45-47. *For example, the Department may determine in an audit that [a taxpayer's] claimed refund is inappropriate for other reasons or that is [sic] allowable under other tax provisions. Weinberger v. Salfi* (1975), 422 U.S. 749, 762, 95 S.Ct. 2457, 2465, 45 L.Ed.2d 522, 537.

502 N.E.2d at 122 (emphases added), approved in *Sproles,* 672 N.E.2d at 1361. The Department interprets the emphasized language as requiring it, whenever possible, to decide any tax protest in which, or any issue in a protest in connection with which, the taxpayer in question has raised constitutional issues on any non-constitutional grounds that taxpayer may also have raised. *See Bethlehem Steel Corp. v. Indiana Dep't of State Revenue,* 639 N.E.2d 264, 272 (Ind. 1994) (finding it unnecessary to resolve a constitutional challenge after deciding the case on non-constitutional grounds). However, if the Department cannot successfully resolve a protest on such alternative grounds, or if a taxpayer has not raised any non-constitutional issues, it will only address claims of unconstitutionality to the extent necessary to resolve a protest and only as applied to the taxpayer and assessment in question. In addition, the Department will do so only to the extent authorized, or at least not barred, by statute or constitutional provision. In particular, the Department cannot and will not entertain facial attacks on a statute concerning a tax that it administers. IND. CONST. art. III, § 1; *Grazer,* 116 N.E.2d at 112; *Standard Oil,* 101 N.E.2d at 66.

As the Department will explain under its Discussion of Issue IV below, the present protestant has attacked the FIT, and the credit against that tax for nonresident taxpayers, on their faces rather than as applied to it in this audit. IND. CONST. art. III, § 1 as interpreted in *Grazer* and *Standard Oil* therefore prevent the Department from addressing these arguments. However, in addition to its constitutional challenges, the merged unitary group has also attacked the assessment on three non-constitutional grounds. Accordingly, and consistent with *Felix* as approved in *Sproles*, the Department will address these non-constitutional arguments.

B. THE PROTESTANT'S ARGUMENT

As noted in the Statement of Facts, the Department issued the Notices of Proposed Assessment to the original parent. The merged unitary group contends that the Department should have served the Notices on the filing member instead. In so arguing the merged group implies that the Department must read the first sentence of 45 IAC § 15-5-1 (1988) (1992) (1996) literally as requiring it to serve the Notices of Proposed Assessment on the filing member as the taxpayer that improperly reported that group's and the original unitary group's FIT liability.

More importantly, the protestant also submits that the Department's serving the Notices on the original parent instead of the filing member invalidated the proposed assessments. The protestant argues that the original parent was neither a "taxpayer" as defined in IC § 6-5.5-1-17(a) nor the filing taxpayer member of the unitary group for purposes of IC §§ 6-5.5-6-1 and -2-4, and therefore was not the proper entity upon which the Department should have served the Notices of Proposed Assessment. Implicit in this argument is the proposition that the definition of "taxpayer" in IC § 6-5.5-1-17(a) should also define that word in 45 IAC § 15-5-1 when the Department serves a Notice of Proposed Assessment of FIT, in order to identify the allegedly correct entity upon which to serve that Notice.

C. THE DEPARTMENT'S RESTATEMENT OF THE ISSUES

The Department views this matter somewhat differently than does the merged unitary group. In the Department's view the real questions to be answered are threefold. The first is whether the word "taxpayer" in this factual context refers to the entire original or merged unitary group the returns for the period in question covered, or the member that actually prepared and filed those returns,

or caused them to be prepared and filed. The second and third questions are related to each other but distinct from the first question. They are, second, whether the Department was legally empowered to send the Notices of Proposed Assessment to the original parent, and third, whether the original parent was empowered to receive those Notices on behalf of the merged unitary group.

D. THE "TAXPAYER" ON WHICH THE DEPARTMENT SERVED THE NOTICES OF PROPOSED ASSESSMENT WAS THE ENTIRE MERGED UNITARY GROUP

Turning first to the question of the identity of the "taxpayer," it is necessary at the outset to put 45 IAC § 15-5-1, and its use of that word, into the proper legal context. This regulation read during the audit period, and at this writing still reads, as follows:

> Sec. 1. If the department believes that a *taxpayer* has improperly reported a listed tax liability, the department may at any time within the prescribed statute of limitations period issue to such *taxpayer* 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 *taxpayer* 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.

Id (emphases added). The Department promulgated 45 IAC § 15-5-1 as one of the regulations intended to implement IC § 6-8.1-5-1, which forms part of the Tax Administration Act, P.L. 61, § 1, 1980 Ind. Acts 660, 660-684, codified as amended at IC article 6-8.1 (1998) (hereinafter "the TAA"). The TAA governs the procedures for assessment, collection and administration of the taxes for which the General Assembly has made the Department responsible. IC § 6-8.1-1-1 appropriately defines them as being "listed taxes," compiling them and citing to the parts of IC title 6 in which they are located. *Id.* The Financial Institutions Tax Act, P.L. 347-1989(ss), § 1, 1989 Ind. Acts 2496, 2496-2519, codified as amended at IC article 6-5.5 (1988 and Supps. 1989-92) (1993 and Supps. 1994-97) (hereinafter "the FITA"), has made the FIT a listed tax ever since it first took effect on January 1, 1990 (*see id.* §§ 1 and 31, 1989 Ind. Acts at 2496 and 2540, respectively, indicating effective date). The FITA includes IC § 6-5.5-9-2, 1989 Ind. Acts at 2518, which states that "[f]or purposes of administration and enforcement the provisions of IC 6-8.1 that are applicable to a listed tax and an income tax apply to the tax imposed by this article." *Id.* (The legislature made a technical amendment to add the FIT to IC § 6-8.1-1-1 during the audit period in P.L. 71-1993, § 15, 1993 Ind. Acts 3294, 3310.) The TAA thus applies to questions of the Department's authority to administer the FIT.

It follows that for purposes of determining the entities upon whom the Department is authorized to serve a Notice of Proposed Assessment of FIT under 45 IAC § 15-5-1 that the definition of "taxpayer" in IC § 6-8.1-1-5.5 controls. That definition is broad enough to include the definition of "taxpayer" in IC § 6-5.5-1-17(a). The latter statute defines "taxpayer" for purposes of the FITA as "a *corporation* that is transacting the business of a financial institution in Indiana[.]" *Id* (emphasis added). (*But see* IC § 6-5.5-1-18(a) (indicating that a unitary group can also include "a partnership, a limited liability company, or a trust, … or any other entity, … that conducts … the business of a financial institution …[,]" *id.*). The FITA's definition of "corporation" in IC § 6-5.5-1-6 reads as follows:

> "Corporation" means an entity that is:
>
> (1) A corporation (as defined in Internal Revenue Code [26 U.S.C.] Section 7701(a)(3)) for federal income tax purposes, including an entity taxed as a corporation under the Internal Revenue Code; and
>
> (2) Organized under the laws of the United States, this state, any other taxing jurisdiction, or a foreign government.

Id. (I.R.C. § 7701(a)(3) (1988) (1994) in turn states that "[t]he term 'corporation' includes associations, joint-stock companies, and insurance companies." *Id.*) In contrast, IC § 6-8.1-1-5.5 states that "'taxpayer' means a *person* liable for the payment of taxes." *Id* (emphasis added). The TAA's definition of "person" in IC § 6-8.1-1-3 "includes [in relevant part] … national bank, bank, … *corporation, …or any group or combination acting as a unit.*" *Id* (emphases added). This definition thus includes all of the entities described in IC § 6-5.5-1-6 and I.R.C. § 7701(a)(3). That being the case, the merged group's argument that the definition of "taxpayer" in IC § 6-5.5-1-17(a) applies to 45 IAC § 15-5-1 in this protest raises an unnecessary argument that does nothing to advance its position.

Moreover, the Department would observe that the protestant's argument that the first sentence of 45 IAC § 15-5-1 authorized service of the Notices only on the filing member is a double-edged sword for the protestant. The reason this is so is because the sections of the TAA that deal with protest procedure imply that the person to whom the Department sent the Notice of Proposed Assessment is also the person that has standing to protest that assessment. For example, IC § 6-8.1-5-1(c) requires that "[t]he notice [of proposed assessment] shall state that *the person* [to whom the Department sent it] has sixty (60) days from the date the notice is mailed to pay the assessment or to file a written protest." *Id* (emphasis added). In the same vein, IC § 6-8.1-5-1(e) states that "the department shall issue a letter of findings and shall send a copy of the letter through the United States mail *to the person who filed the protest*…." *Id* (emphasis added).

Carrying the merged unitary group's argument to its logical conclusion, if its literal interpretation of the first sentence of 45 IAC § 15-5-1 were adopted, then it follows that IC § 6-8.1-5-1(c) and (e) would also have to be interpreted literally as giving only the filer standing to protest. However, the merged group submitted the original protest letter in this dispute on letterhead of the original parent, signed by its then Senior Tax Counsel and Vice President, and not in the name of the filing member. Therefore, if the Department were to agree with the merged group's argument and sustain it on this issue, the Department also would have to treat

this protest as having been submitted *ultra vires* and deny it in its entirety for lack of standing, or at the very least for failure to join an indispensable party.

Fortunately for the merged unitary group, the TAA does not require such a result. As previously noted, the definition of "person" in IC § 6-8.1-1-3 "includes … *any group or combination acting as a unit.*" *Id* (emphasis added). In turn, IC § 6-8.1-1-5.5 states that " 'taxpayer' means *a person* liable for the payment of taxes[,]" *id.* These two quotations, as applied to 45 IAC § 15-5-1 and IC § 6-8.1-5-1(c) and (e), are thus plainly sufficient to interpret those authorities as referring, in a situation involving an income or franchise tax audit of a group, to the entire group that the erroneous return covers. *Cf. Associated Ins. Cos. v. Indiana Dep't of State Revenue,* 655 N.E.2d 1271, 1274 (Ind. Tax Ct. 1995) (stating that "[t]he spirit and intent of the [former] gross income tax consolidated filing statute is to treat an affiliated group as a single taxpayer[ ]"). It therefore follows that when the Department serves a Notice of Proposed Assessment in such a situation, or the group covered by the erroneous return protests the proposed assessment, the effect of the Notice or protest is not restricted just to the member that filed or caused the filing of the erroneous return. The Notice covers, and the protest binds, the whole group. These results are consistent with the Indiana rules of statutory interpretation that statutes governing tax assessment and collection, and remedial statutes (including statutes containing tax remedies, such as the TAA), are to be liberally construed. *See Department of Treasury v. Dietzen's Estate,* 21 N.E.2d 137, 139 (Ind. 1939) (tax assessment statutes); *Economy Oil Corp. v. Indiana Dep't of State Revenue,* 321 N.E.2d 215, 218 (Ind. Ct. App. 1974) (same, citing *Dietzen's Estate*). *See also W. H. Dreves, Inc. v. Osolo Sch. Twp.,* 28 N.E.2d 252, 254 (Ind. 1940) (remedial statutes), citing, *inter alia, Board of Comm'rs of Marion County v. Millikan,* 190 N.E.185 (Ind. 1934) (property tax refund case).

E. THE DEPARTMENT'S SERVICE OF THE NOTICES OF PROPOSED ASSESSMENT ON THE ORIGINAL PARENT INSTEAD OF THE FILING MEMBER WAS VALID AND ACTED AS SERVICE ON ALL MEMBERS OF THE MERGED UNITARY GROUP.

The FITA and case law support the proposition that service on the original parent was proper. The last sentence of IC § 6-5.5-6-1 makes each member of a unitary group jointly and severally liable for the FIT liability of the group. Treating service of the Notices of Proposed Assessment on any member of the merged unitary group, including the original parent, as providing notice to all the other group members is thus completely consistent with the last sentence of IC § 6-5.5-6-1. It is also consistent with the "joint contractor" theory of liability on which the District of Columbia Court of Appeals relied in American *Auto Trimming Co. v. Lucas,* 37 F.2d 801, 804 (D.C. Cir. 1930). In that case the Commissioner of Internal Revenue had failed to serve a notice of deficiency on one of two sibling corporations (the same individual owning all or a substantial majority of the stock in each). The former Board of Tax Appeals (the predecessor to the United States Tax Court) found and asserted deficiencies against both corporations, which appealed. In response, the Court of Appeals said that "[t]he filing of a consolidated return by the Detroit and Cleveland [American Auto Trimming] companies was an assertion and an admission of identity of interest. Their situation was not unlike that of joint contractors, so that *notice to either was notice to both.*" *Id.* at 804 (internal quotation marks omitted) (emphasis added), *followed in Anheuser-Busch, Inc. v. Comm'r,* 40 B.T.A. 1100, 1109 (1939).

There is also Indiana judicial precedent that provides analogous support for treating the service of the Notices on the original parent as giving notice to all the other group members. Indiana law is well settled that if the Department has served a corporation with a Notice of Proposed Assessment for an unpaid "trust fund" tax (e.g., sales or withholding tax), procedural due process does not require separate service of a Notice for the same tax on the responsible officer/s who had the statutory duty of collecting and remitting those taxes. *Ball v. Indiana Dep't of State Revenue,* 525 N.E.2d 356, 358-359 (Ind. Tax Ct. 1988) ("*Ball I*"), *aff'd* 563 N.E.2d 522, 524 (Ind. 1990) ("*Ball II*"), both following *Mullane v. Central Hanover Bank & Tr. Co.,* 70 S.Ct. 652, 657 (U.S. 1950) and *Van Orman v. State,* 416 N.E.2d 1301, 1306 (Ind. Ct. App. 1981). In that situation notice to the corporation is considered to be notice to the responsible officer sufficient to satisfy procedural due process. *Ball II,* 563 N.E.2d at 524.

In both *Ball* and *Van Orman* the person against whom the Department asserted responsible officer status was president of and majority shareholder in the corporation liable for sales tax. The Indiana Supreme Court expressed the rationale for holding such persons to have notice of the proposed assessment trust fund tax as follows:

> Under [the trust fund tax collection statutes], only those persons who have a duty to remit such assessments can be held personally liable for the failure to remit those taxes that are to be held in trust for the State. Thus, because these persons serving the corporation have direct and immediate *control* of the internal corporate processes dealing with these entrusted funds, it may be safely assumed that they are aware of the responsible officer statute which is the source of their potential personal liability and that they are aware of and privy to corporate correspondence relating to their corporate duties including notices of assessment sent to the corporation.

Id (emphasis added). The Court of Appeals' analysis in *Van Orman* was to the same effect, although blunter because the responsible officer in *Van Orman* had actually signed the protest and participated in the protest hearing. In this latter connection that court said:

> To say that Van Orman was unaware of the corporation's failure to pay the tax or to contend that he was unaware of his personal liability, in the face of IC 1971, 6-2-1-49 [the former sales tax responsible officer statute] (now repealed) [current version at IC § 6-2.5-2-1(b) (1998)], is ludicrous. All persons are charged with the knowledge of the rights and remedies

prescribed by statute. *Middleton Motors, Inc. v. Ind. Dept. [of State Revenue]* (1978), 269 Ind. 282, 380 N.E.2d 79, 81. The clear pronouncement of the statute is, ipso facto, sufficient notice that a duty exists to remit the tax fund held in trust. No personal notice of the assessment is required.

416 N.E.2d at 1306, quoted in *Ball I,* 525 N.E.2d at 358 (internal quotation marks omitted).

In the Department's view the rationales of *Ball II* and *Van Orman* made service of the Notices of Proposed Assessment on the original parent enough to impute knowledge, and therefore due process notice, of the FIT liability to the other members of the merged unitary group. As previously noted, the last sentence of IC § 6-5.5-6-1 imposes joint and several liability for a unitary group's FIT on each member of the group. That statute, like the responsible officer collection and remittance statutes at issue in *Ball I, Ball II* and *Van Orman,* gave every member of the merged group general constructive notice of its potential liability for the entire group's FIT. The original parent, like the responsible officers in those opinions, had the ability through majority stock ownership and executive power to control the other members of the group. In the unitary group context, "[u]nity is presumed whenever there is *unity of ownership, operation* and use evidenced by centralized management or *executive force, …or other controlled interaction* among entities that are members of the unitary group[.]" IC § 6-5.5-1-18(b) (emphases added). Since the original parent could control the other members, it is only proper that notice to it should also bind all the other members, including the filer. This is not to say that serving the Notices on the filing member would not have been equally valid. The Department is simply saying that serving the original parent was also permissible, either (as here) in place of, or in addition to, the filer. IC § 6-5.5-6-1 essentially enabled the original parent, as the controlling member of the group, to designate the filing member as its and the group's FIT compliance agent. However, the fact that a principal (in this case the original parent) has an agent does not ordinarily preclude third parties (e.g., the Department) from dealing directly with the principal, or deprive the principal of the ability to act for itself or entities that it controls. Certainly the original parent did so in filing and prosecuting the present protest, just as the responsible officer in *Van Orman* did on behalf of his corporation, and the protestant therefore cannot claim that it suffered any legal prejudice to its ability to make its case. Like the Court of Appeals in that case, the Department finds the protestant's contention that the Department's service of the Notices of Proposed Assessment on the original parent rather than the filing member voided the assessments to be "ludicrous." 416 N.E.2d at 1306.

As noted in the Statement of Facts, the auditor had two reasons for submitting the Audit Summary under the name of the original parent. One was that the original unitary group (and, by implication, the original parent acting as the common parent for that group) was the same entity that had filed Indiana income tax returns before the FIT was enacted. The other was that the original parent had been the responsible filing member of the federal consolidated group during the audit period. Thus, although the auditor did not rely on Treas. Reg. § 1.1502-77(a) or the responsible officer opinions, she reached the same result as those authorities. It follows that the Department did not err under either the TAA or the FITA in following the auditor's recommendation and issuing the Notices of Proposed Assessment to the original parent, instead of to the Indiana filing member.

FINDING

The merged unitary group's protest is denied as to this issue.

II. Financial Institutions Tax—Imposition—Transacting Business of Financial Institution in Indiana—Regular Solicitation of Business in or Attribution of Receipts to Indiana (1993-96)

Tax Procedure—Protests—Burden of Proof

DISCUSSION

A. INTRODUCTION.

Before turning to the merits of the merged group's argument on this issue, the Department will first give an overview of the relevant parts of the FITA, and regulations promulgated thereunder to put both the argument and the auditor's adjustment in their proper legal contexts. The Department will then discuss the protestant's procedural responsibilities because they are material to the resolution of this issue.

B. OVERVIEW OF RELEVANT PARTS OF THE FINANCIAL INSTITUTIONS TAX ACT

The Indiana Supreme Court has characterized "the FIT [a]s [being]… an excise tax on the exercise of the corporate privilege of operating as a financial institution in Indiana." *Indiana Dep't of State Revenue v. Fort Wayne Nat'l Corp.,* 649 N.E.2d 109, 112 (Ind. 1995). More precisely, IC § 6-5.5-2-1(a) "impose[s] on each taxpayer a franchise tax measured by the taxpayer's adjusted gross income or apportioned income for the privilege of exercising [the taxpayer's] franchise or the corporate privilege of *transacting the business of a financial institution in Indiana*." *Id* (emphasis added). IC § 6-5.5-1-17(a) defines "taxpayer" for purposes of the FITA (as distinguished from the TAA) as "a corporation that is transacting the business of a financial institution in Indiana[.]" *Id.* "Transacting the business of a financial institution in Indiana" thus defines both the taxable event and the class of persons subject to the tax. IC § 6-5.5-1-17(d) defines the term "business of a financial institution." The protestant does not dispute that the activities of the filing member and Members A through C during the audit period met that definition. It only disputes whether the auditor should have treated certain of the activities of Members A through C as having been transacted in, or attributed those activities to, Indiana.

IC chapter 6-5.5-3 sets out the rules for determining whether the entity in question is transacting business in Indiana or in some

other jurisdiction. IC § 6-5.5-3-1 and its implementing regulation, 45 IAC § 17-2-6, list eight activities that constitute transacting business within Indiana. Of particular relevance in this protest are the rules that a financial institution transacts business within Indiana if it "regularly solicits business from potential customers in Indiana," IC § 6-5.5-3-1(4) and 45 IAC § 17-2-6(4), or "regularly engages in transactions with Indiana customers that involve intangible property, including loans, …[,]" IC § 6-5.5-3-1(6) and 45 IAC § 17-2-6(8). In this context "loan" includes "a lender credit card or similar arrangement[.]" IC § 24-4.5-3-106(3) (1988)(1993).

Once a taxable event has occurred, it is then necessary to determine whether the event is attributable to Indiana. IC §§ 6-5.5-3-2 to -7 set out the guidelines for doing so. The taxable event in the audit at issue in this protest is the existence of intangible assets attributable to Members A through C. Such situations are governed by IC § 6-5.5-3-5, which states in relevant part that "[i]ntangible assets are attributable to this state if the income earned on those assets is attributable to this state under this article." *Id.* The rules for attributing receipts are found in IC chapter 6-5.5-4 and its implementing regulation, 45 IAC § 17-3-10 (1992) (1996). (The auditor relied on paragraphs (b)(6) through (b)(9) of the latter regulation as authority for the assessments for the years in question.)

If a taxable event attributable to Indiana has occurred then, as noted above, the tax imposed is "measured by the taxpayer's adjusted gross income or apportioned income[.]" IC § 6-5.5-2-1(a). Apportionment of income is necessary if the tax is imposed on a nonresident taxpayer as defined in IC § 6-5.5-1-12, i.e. a taxpayer that is transacting business within Indiana as determined under IC chapter 6-5.5-3 but that has its commercial domicile outside Indiana. Members A through C each fit this definition during the audit period. The income of such nonresident taxpayers is apportioned whether transacting the business of a financial institution alone or (as is the case here) as members of a unitary group as defined in IC § 6-5.5-1-18(a). In contrast to the three-factor formula of property, payroll and sales of IC § 6-3-2-2 that is used- to apportion corporate adjusted gross income for adjusted gross income tax purposes, the FITA uses a single-factor apportionment formula based on adjusted gross income (hereinafter "AGI") and receipts. IC §§ 6-5.5-2-3 and -4 respectively set out the formulas applicable to single nonresident taxpayers and unitary groups that include nonresident taxpayers, the latter statute being the one applicable in the present case. Under each statute total AGI of the sole nonresident taxpayer or of all members of the unitary group is multiplied by the quotient of a fraction. Under each statute the numerator of that fraction includes all receipts of the sole nonresident taxpayer or the unitary group attributable to doing business in Indiana and the denominator consists of total receipts from transacting business in all taxing jurisdictions. IC § 6-5.5-4-1 makes the attribution rules of IC chapter 6-5.5-4 and 45 IAC § 17-3-10 applicable in determining what receipts are to be included in the numerators of the apportionment ratios applicable to nonresident taxpayers, whether they are filing separate returns or (as is the case here) they are members of a unitary group as defined in IC § 6-5.5-1-18(a) that is filing a combined return pursuant to the second paragraph of IC § 6-5.5-6-1. For this purpose IC § 6-5.5-4-2(1) defines "receipts" as gross income as defined in IC § 6-5.5-1-10 and I.R.C. (26 U.S.C.) § 61 (1988) (1994), with certain adjustments not in issue here. In the case of nonresident taxpayers that hold intangible assets attributable to Indiana, IC chapter 6-5.5-4 does simultaneous double duty. It establishes that such assets are attributable to Indiana as taxable events if the income from them is attributable to Indiana, and that the income from them therefore must also be included in the apportionment ratio numerator in computing the FIT.

As noted above, to support the present adjustment the auditor cited to 45 IAC § 17-3-10(b)(6)-(9), which respectively implement IC §§ 6-5.5-4-4 to -6 and -8. IC § 6-5.5-4-4 and 45 IAC § 17-3-10(b)(6) each state that "[i]nterest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property must be attributed to Indiana if the security or sale property is located in Indiana." IC § 6-5.5-4-5 and 45 IAC § 17-3-10(b)(7) both make interest income and other receipts from consumer loans not secured by real or tangible personal property attributable to Indiana if the loan is made to an Indiana resident. IC § 6-5.5-4-6 and 45 IAC § 17-3-10(b)(8) both state in relevant part that "[i]nterest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property must be attributed to Indiana if the proceeds of the loan are to be applied in Indiana." IC § 6-5.5-4-8 and 45 IAC § 17-3-10(b)(9) each state that "[i]nterest income, merchant discount, and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' ['cardholders' ' in the regulation] fees must be attributed to the state to which the card charges and fees are regularly billed." It is inferable from the auditor's citation to 45 IAC § 17-3-10(b)(6)-(9) that she found that Members A through C had transacted business in Indiana during the audit period because they had "regularly engage[ing] in transactions with customers in Indiana that involve intangible property, including loans, …." IC § 6-5.5-3-1(6).

C. THE PROTESTANT HAS THE BURDEN OF PROOF THAT THE PROPOSED ASSESSMENTS ARE WRONG.

The TAA specifies the administrative procedure to be followed in a protest. Under the TAA a taxpayer, defined in IC § 6-8.1-1-5.5 for purposes of that act as "a person liable for the payment of taxes[,]" *id.*, has the burden of proof in a protest. IC § 6-8.1-5-1(b) states that "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.") *Id*. *See also* BLACK'S LAW DICTIONARY 190 (7th ed. 1999) (defining "burden of proof" as a "party's duty to prove a disputed assertion or charge"). The burden of proof is two-fold, consisting of both the burden of persuasion and the burden of production. *Porter Mem'l Hosp. v. Malak*, 484 N.E.2d 54, 58 (Ind. Ct. App. 1985) (noting that "burden of proof" is not a precise term, as it can mean both the burdens of persuasion and production).

The terms "burden of production" and "burden of persuasion" have two distinct meanings. *See State v. Huffman*, 643 N.E.2d 899, 900 (Ind. 1994) (stating that there are "two senses" of the term "burden of proof," the burdens of persuasion and production). The burden of production, also referred to as the burden of going forward, is the taxpayer's "duty to introduce enough evidence on an issue to have the issue decided by the fact-finder." *Id*. In other words, a taxpayer must submit evidence sufficient to establish a prima facie case, i.e., evidence sufficient to establish a given fact and which if not contradicted will remain sufficient to establish that fact. *See Longmire v. Indiana Dep't of State Revenue*, 638 N.E.2d 894, 898 (Ind. Tax Ct. 1994); *Canal Square Ltd. Partnership v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 804 (Ind. Tax Ct. 1998). *Cf. Bullock v. Foley Bros. Dry Goods Corp.*, 802 S.W.2d 835, 839 (Tex. App. 1990) (observing, in challenge to state's sales and use tax audit, that comptroller's deficiency determination is prima facie correct and that taxpayer must disprove it with documentation).

In contrast to the burden of production component of the burden of proof, the burden of persuasion is the taxpayer's "duty to convince the fact-finder to view the facts in a way that favors that party." BLACK'S LAW DICTIONARY 190 (7th ed. 1999). That same definition also indicates that the term "burden of persuasion is "[a]lso loosely termed *burden of proof*." *Id* (emphasis in original.) Some cases have referenced this dual meaning. *See, e.g., Peabody Coal Co. v. Ralston*, 578 N.E.2d 751, 754 (Ind. Ct. App. 1991) (observing that in criminal cases, the "State carries the ultimate burden of proof, or burden of persuasion").

Thus, if a taxpayer believes that a proposed assessment is based on incorrect factual findings, it is that taxpayer's burden to produce books, records or other evidence that will prove the true facts. *See* IC §§ 6-8.1-5-4 and -5.5-6-9 (requiring taxpayers to keep books and records necessary to determine liability for any listed tax and for the FIT, respectively). If the taxpayer believes that a proposed assessment is legally insufficient, it is that taxpayer's burden to persuade the Department that the ground on which the assessment is actually based, not the ground the taxpayer may choose or believes was chosen, is erroneous.

D. THE PROTESTANT'S ARGUMENT

IC § 6-5.5-3-4, on which the merged unitary group bases its argument, describes what activities trigger a rebuttable presumption that a person "regularly solicits business … in Indiana" as IC § 6-5.5-3-1(4) uses that phrase. During the audit period IC § 6-5.5-3-4 read, and at this writing still reads, as follows:

> Sec. 4. A person is presumed, subject to rebuttal, to regularly solicit business within Indiana if:
>
> (1) The person conducts activities described in section 1(3), 1(5), and 1(6) of this chapter [IC § 6-5.5-3-1(3), -1(5), and -1(6)] with twenty (20) or more customers within Indiana during the taxable year; or
>
> (2) The sum of the person's assets, including the assets arising from loan transactions, and the absolute value of the person's deposits attributable to Indiana equal at least five million dollars ($5,000,000).

Id. Title 45 IAC § 17-2-9 implements IC §§ 6-5.5-3-1(4) and -4(1), while 45 IAC § 17-2-8 defines and describes the activities that constitute "soliciting business" for purposes of these statutes. Broadly speaking, for a financial institution taxpayer to be soliciting business within the meaning of 45 IAC § 17-2-8, that taxpayer must advertise or disseminate information about its business, in any medium, to potential Indiana customers.

The merged unitary group argues that it has rebutted this presumption as to Members A through C for three reasons, which the merged group appears to offer with reference to IC § 6-5.5-3-4(1). First, the group contends that some of the transactions with these members that the auditor included in the apportionment numerator arose before the customers in question moved into Indiana. Second, the group submits that Members A through C might also buy loans from other financial institutions that had been negotiated and closed outside the state. Finally, the protestant submits that in some instances these members made loans to businesses headquartered outside Indiana but with operations within the state, and that used the loan proceeds in connection with those operations.

E. THE PROTESTANT HAS FAILED TO SUSTAIN ITS BURDEN OF PROOF AS TO THIS ARGUMENT.

However, there are several problems with this argument. First, the merged group has submitted no evidence whatever that any of the transactions to which it arguments refer in fact existed during the reporting periods in question. Nor has the protestant submitted evidence that the sum of its assets and deposits attributable to Indiana during those periods fell below the $5,000,000 minimum of IC § 6-5.5-3-4(2). Second, the merged unitary group has failed to persuade the Department that IC §§ 6-5.5-3-1(4) and -4(1) even govern this protest, let alone that the merged group has rebutted the presumption that the latter section creates. The Audit Summary in particular did not cite these statutes or 45 IAC §§ 17-2-8 or -9 to support the adjustment, which would have been a simple thing for the auditor to do if that had been her intent. Nor is there any evidence in the record, either provided by the merged group or in the audit file, of Members A through C "soliciting business" within the meaning of that regulation during the reporting periods in question for the merged unitary group to rebut under IC § 6-5.5-3-4.

G. IC § 6-5.5-3-1(6) DESCRIBES THE TAXABLE EVENT THAT OCCURRED.

Third, IC § 6-5.5-3-1(6), rather than IC §§ 6-5.5-3-1(4) and -4(1), was the basis for the auditor's adjustment. As previously noted, the auditor cited 45 IAC § 17-3-10(b)(6)-(9) in the Audit Summary. The Department infers from this citation and the relevant entries in the Audit Summary and the auditor's workpapers that Members A through C had transacted business in Indiana by regularly engaging with Indiana customers in transactions having intangibles, i.e. loans, as their subjects. Members A through C thereby brought themselves within the scope of IC § 6-5.5-3-1(6). IC § 6-5.5-3-4(1) does cite IC § 6-5.5-3-1(6) as describing one

of the three predicate forms of transacting business in Indiana that can support a finding that a financial institution has also regularly solicited business within Indiana under IC § 6-5.5-3-1(4). However, that institution must also in addition have "solicit[ed] business" as described in 45 IAC § 17-2-8. As previously noted, there is no evidence in the record to indicate that Members A through C engaged in any such solicitation.

Moreover, and more importantly, IC § 6-5.5-3-1(6) makes engaging in intangible property transactions with Indiana customers an independent taxable event. This is the case in part because of the structure of IC § 6-5.5-3-1, which uses the word "or" between subsections (7) and (8) to describe the relationship among all of the subsections. "The word 'or' is used in the disjunctive sense, indicating that various parts of the sentence which it connects are to be taken separately." *State v. Levitt,* 203 N.E.2d 821, 827 (Ind. 1965). Disjunctive and conjunctive terms within statutes "should ordinarily be given their literal and normal definition when it is apparent that the resulting meaning was intended[.]" *Dague v. Piper Aircraft Corp.*, 418 N.E.2d 207, 211 (Ind. 1981). "[W]here the legislature uses the disjunctive 'or,' and no portion of the statute is thereby rendered meaningless, effect must be given to the plain words used by the legislature." *Babinchak v. Town of Chesterton,* 598 N.E.2d 1099, 1103 (Ind. Ct. App. 1992).

However, soliciting and engaging in transactions are also distinct taxable or legal events by virtue of the common definitions of the verbs "solicit," "engage" and "transact," the nouns "solicitation" and "transaction" and the definition of "soliciting business" in 45 IAC § 17-2-8. "[U]nless the construction is plainly repugnant to the intention of the legislature or of the context of the statute: (1) Words and phrases shall be taken in their plain, or ordinary and usual, sense." IC § 1-1-4-1(1). "It is axiomatic in Indiana that the plain, ordinary, and usual meaning of non-technical words in a statute is defined by their ordinary and accepted dictionary meaning." *Johnson County Farm Bureau Coop. Ass'n, Inc. v. Indiana Dep't of State Revenue,* 568 N.E.2d 578, 581 (Ind. Tax Ct. 1991), *aff'd and adopted* 585 N.E.2d 1336 (Ind. 1992). The verb "solicit" means in relevant part "to approach with a request or plea (as in selling or begging) …." WEBSTER'S THIRD NEW INT'L DICTIONARY 2169 (4th ed. 1976) (definition 3) (hereinafter "WEBSTER'S THIRD"). The relevant definition of the derivative noun "solicitation" is " [a]n attempt or effort to gain business …." BLACK'S LAW DICTIONARY 1398 (7th ed. 1999) (definition 4) (hereinafter "BLACK'S"). In other words, a solicitation is an effort by the soliciting party to make intended recipients of the solicitation aware of a commercial opportunity with the aim of initiating a business relationship with one or more of those recipients. Title 45 IAC § 17-2-8 describes activities of this type. It is obvious, both from the dictionary definitions of "solicit" and "solicitation" and from the descriptions of the activities in the regulation, that "soliciting business" as defined in that regulation would occur for purposes of IC §§ 6-5.5-3-1(4) and -4(1) at the beginning of any resulting business relationships with Indiana customers.

In contrast, the short definition of the intransitive verb "engage" is "[t]o employ or involve oneself; to take part in; to embark on." BLACK'S at 549. The relevant general dictionary definitions of that verb are as follows: "to begin and carry on an enterprise, esp[ecially] a business or profession … to employ or involve oneself … to take part**:** PARTICIPATE …." WEBSTER'S THIRD at 751 (definitions 2 a, 2 b and 2 c) (emphasis in original). The relevant definition of the noun "transaction" in the same dictionary simply describes it as "something that is transacted: as … a business deal[.]" *Id.* at 2425-2426 (definition 2 a). A definition in another dictionary is more explicit, defining "transaction" as "[t]he act or an instance of conducting business or other dealings." BLACK'S at 1503 (definition 1). The relevant definition in the same dictionary of the verb "transact," from which "transaction" is derived, is "[t]o carry on or conduct (negotiations, business, etc.) to a conclusion <transact business>." *Id* (definition 1). A transaction thus deals with a whole course of business conduct between two or more parties, while a solicitation is an isolated act that occurs at the beginning of any resulting transaction.

Engaging in and soliciting a transaction thus are distinct, albeit related, activities. They may, but need not necessarily, overlap in any given transaction. The creditor in a transaction may not have initially solicited it, but may nevertheless be engaged in it, as is the case where the creditor is an assignee, holder in due course or other successor in interest. Even where soliciting and engaging in a particular transaction do overlap, the fact that the solicitation may have occurred in one jurisdiction does not prevent or preclude engaging in that transaction in another jurisdiction.

Thus, even assuming without deciding that the factual representations in the merged group's argument were true, those "facts" would not be enough to invalidate the proposed assessments. The fact that the intangible property transactions attributed to Indiana were solicited and closed elsewhere, either by Members A, B or C or another financial institution to which the member in question succeeded as assignee or holder in due course, did not preclude that member from engaging in those transactions in Indiana. This was so regardless of whether the debtors in question were businesses headquartered elsewhere, but with in-state operations, or consumers who sometime during the course of their respective transactions became Indiana residents. The protestant has thus failed to meet its burden of proof that the assessment is wrong. *See* IC § 6-8.1-5-1(b) and *Malak,* 484 N.E.2d at 58, both discussed above.

FINDING

The merged unitary group's protest is denied as to this issue.

III. Tax Procedure—Adjustments to Federal Returns—Timeliness of Notice to Department (1993)

A. THE PROTESTANT'S ARGUMENT

As noted in the Statement of Facts, the auditor declined to adjust the original group's liability for calendar year 1993 on the ground that the changes had not been reported to the Department within one hundred twenty (120) days after the modification to

the federal return for that year. The protestant submits that the auditor's action was erroneous for three reasons. First, the merged unitary group argues that its 120-day reporting period should not have started running until July 7, 1998, the date of a clearance and closure letter for calendar years 1992-93 it alleges it received from the IRS Joint Committee on Taxation. Second, the merged group contends that IC § 6-5.5-6-6, the section of the FITA that imposes the 120-day reporting requirement, does not impose any sanction for failing to meet that deadline. Third, the protestant submits that the auditor discriminated against it by accepting as timely notifications of changes that increased its FIT liability, while declining to accept a change that decreased that liability and entitled it to a refund of or credit against its FIT.

B. THE 120-DAY NOTIFICATION DEADLINE RAN FROM THE DATE THE ORIGINAL UNITARY GROUP'S FEDERAL FORM 1120X FOR 1993 WAS SUBMITTED.

The Department notes that the merged unitary group has not submitted a copy of the purported clearance and closure letter for 1992-93 in support of its protest. The Department therefore would be justified in declining to address the merged group's argument based on that purported letter for failing to sustain its burdens of production and proof. IC § 6-8.1-5-1(b); *Huffman*, 643 N.E.2d at 900; *Longmire*, 638 N.E.2d at 898; *Canal Square Ltd. Partnership*, 694 N.E.2d at 804. However, even if any such letter existed and was dated July 7, 1998, it would not be enough to justify the Department's granting the protestant the benefit of the 1993 reduction. IC § 6-5.5-6-6(b) states that "[t]he taxpayer shall file the notice in the form required by the department within one hundred twenty (120) days after the alteration or modification is made by the taxpayer or finally determined, *whichever occurs first.*" *Id* (emphasis added). Such records as exist indicate that the original unitary group must have submitted its Form 1120X for 1993, and that the 120-day reporting period must have expired, before the IRS allegedly issued the purported July 7, 1998 clearance and closing letter to the protestant.

The original unitary group was deemed to have paid its remaining outstanding tax liability for 1993, and filed its return, on March 15, 1994, notwithstanding that it actually filed its return on September 14, 1994 pursuant to an automatic extension of time for which it had applied. *See* I.R.C. § 6513(a) (stating that returns filed, or taxes paid, before the last day prescribed for doing so are deemed filed on the prescribed last day, notwithstanding any extension of time the taxpayer may have been granted). The three-year period of limitations created by operation of I.R.C. § 6511(a) for the original unitary group to claim a refund began on that date and would have ended on March 15, 1997. Thus, the last possible date on which the original unitary group could have submitted its 1993 Form 1120X, March 15, 1997, was nearly sixteen months before the IRS allegedly issued its purported July 7, 1998 clearance and closure letter for calendar years 1992-93. However, the protestant's contact person stated in her March 30, 1998 conversation with the auditor that the original unitary group had filed its 1120X for 1993 in 1995. Assuming, without finding, that recollection to be accurate, and further assuming for purposes of this analysis a filing date of December 31, 1995, the original group should have given the Department notice of that modification at the latest by April 30, 1996. Either way, the 1120X had to have been filed well before the purported clearance and closure letter. Since that is the case, the 120-day period for the original group to notify the Department of the change for 1993 cannot be measured from July 7, 1998 as the merged unitary group contends. Instead, by operation of IC § 6-5.5-6-6(b), quoted above, that period must be measured from the date the 1120X was filed, which would have been March 15, 1997 at the latest. The notification period therefore would have run on July 13, 1997 at the latest. There is no written notice in the audit file from either the original group or the merged group to the Department notifying it of the change to the original group's federal income, as IC § 6-5.5-6-6(b) requires. *See id* (stating that "[t]he taxpayer shall *file* the notice in the *form* required by the department ….) (emphases added). The only evidence in the file indicating that the Department had actual knowledge (as distinguished from statutory notice) indicates that the protestant did not communicate the change until over eight months later, in the March 30, 1998 conversation between its contact person and the auditor. The conversation thus was untimely even if it could have constituted notice under IC § 6-5.5-6-6(b), which it could not.

C. THE PENALTY FOR FAILING TO NOTIFY THE DEPARTMENT OF THE ORIGINAL UNITARY GROUP'S DECREASE IN FEDERAL TAXABLE INCOME FOR 1993 WAS THE LOSS OF ANY RESULTING REFUND OF FINANCIAL INSTITUTIONS TAX.

The merged unitary group argues that any failure by it or the original unitary group to give statutory notice is immaterial and should not act to deprive the combined group of a favorable adjustment because IC § 6-5.5-6-6 does not set out any sanction for such failure. It is true that IC § 6-5.5-6-6 does not contain any penalty for noncompliance; however, that omission is immaterial because other authorities, discussed below, state or imply the consequences of failing to give timely notice. The crucial facts in determining which of these authorities applies to the present issue are the merged group's filing an 1120X for 1993 and the resulting reduction in the original group's federal taxable income for that year (assuming the facts contained in the 1120X were as represented to the IRS). That filing and reduction potentially entitled the protestant to a refund of FIT the original unitary group paid for 1993. Therefore, in addition to the merged or original group giving the Department notice within 120 days of the reduction in the latter's 1993 federal income pursuant to IC § 6-5.5-6-6(b), the protestant also had to file a claim with the Department if it wished to receive any resulting refund. The applicability of the authorities governing the latter procedure is critical to the present argument because Indiana law is well settled that where the same section of a tax refund claim statute both creates the right to a refund and specifies the time period for the exercise of that right,

> the provision in fact creates a condition precedent to the statutory right of refund. The legislature may make the very existence of the right of recovery dependent upon the petition for refund being made within three years from the date the taxes are paid. A statute of limitations does not create or extinguish a right. It only places limitations upon a remedy which may be tolled or waived. The limitation in the instant case, however, is a condition essential to the existence of the right and cannot be tolled or waived.

Marhoefer Packing Co. v. Indiana Dep't of State Revenue, 301 N.E.2d 209, 216 (Ind. Ct. App. 1973). This language also requires interpreting IC § 6-5.5-6-6(b) as making the 120-day notification requirement, as applied to modifications that decrease federal income, a further condition precedent to entitlement to any refund of FIT that decrease may create.

Unlike some other listed tax statutes, which include specific sections that set out the procedure to claim a refund or credit under those laws, there are no such provisions in the FITA. The current version of the general refund claim statute, IC § 6-8.1-9-1, which is part of the TAA, therefore governs the procedure for claiming a refund of FIT. IC § 6-8.1-9-1(a) states in substance that a person who has paid more tax than was legally due may file a claim for refund of that tax, but must do so within three years of the later of the due date of the return for the period for which the person made the overpayment, or the date of payment. Subsection (b) of the regulation implementing IC § 6-8.1-9-1, 45 IAC § 15-9-2, quite clearly states: "The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to IC § 6-8.1-9-1[.]" Thus, if only the person who has determined that s/he has overpaid tax can claim a refund, and the Department cannot itself generate a refund without a claim, then it follows that that person will lose the refund if s/he files no claim, or fails to do so within the statutory three-year period. In this connection *Marhoefer Packing* observes that

> This view is consonant with avoidance of stale and fiscally disruptive claims. If no time limitation were placed upon refund claims, budgetary and fiscal planning would be rendered unduly difficult in that the amount of revenue available at any given time to defray the expenses of government would be uncertain as subject to stale claims.

301 N.E.2d at 215. The same policy dictates that a financial institutions taxpayer that fails to give timely notice of a reduction to its federal income lose any resulting refund, particularly where that failure would hinder the Department's ability to complete audits and propose accurate assessments. In addition, failure to give notice or file a claim in time, or at all, deprives the Indiana Tax Court of subject-matter jurisdiction over that refund. *See* IC § 33-3-5-11(a) (1998 and Supp. 2002) (stating that "[i]f a taxpayer fails to comply with *any* statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal[ ]") (emphasis added); *Marhoefer Packing*, 301 N.E.2d at 219 (failure to file claim within three years), approved in *Middleton Motors, Inc. v. Indiana Dep't of State Revenue*, 380 N.E.2d 79, 81 (Ind. 1978) (three-month requirement for filing suit for refund, citing *Marhoefer*); and *GasAmerica Services, Inc. v. Indiana Dep't of State Revenue*, 552 N.E.2d 860, 862 (Ind. Tax Ct. 1990) (failure to file any claim).

It was thus unnecessary for IC § 6-5.5-6-6 to specify any sanctions for failure to give the Department timely notice of a modification that decreases federal income. The authorities discussed above already gave potential refund claimants such as the protestant and the original unitary group constructive notice of those sanctions, i.e. loss of the refund and loss of the right to seek judicial review of any issues concerning that refund. "All persons are charged with the knowledge of the rights and remedies prescribed by statute." *Middleton Motors*, 380 N.E.2d at 81.

D. THE AUDITOR TREATED ALL YEARS FOR WHICH ADJUSTMENTS TO FEDERAL TAXABLE INCOME WERE REPORTED WAS CONSISTENT.

The first above-quoted passage from *Marhoefer Packing* also serves as a response to the protestant's argument that the auditor and the Department applied IC § 6-5.5-6-6 inconsistently as between 1993 and the other years for which the combined unitary group gave belated notice. The difference between modifications that give rise to potential FIT refunds and those that increase FIT liability justifies treating failures to notify the Department of these two kinds of modifications differently. A failure to give notice of a modification that decreases federal income, either alone or in combination with a failure to file a claim for any resulting refund of FIT, is a failure to satisfy a condition precedent to that claim, will extinguish it and will deprive the Department of administrative discretion to entertain it. *Marhoefer Packing*, 301 N.E.2d at 215 and 216, both quoted above. In contrast, a failure to give the Department notice, or timely notice, of a federal modification that increases federal income will equitably estop the taxpayer from invoking, and will equitably toll, the assessment statute of limitations. *Salin Bancshares, Inc. v. Indiana Department of State Revenue*, 744 N.E.2d 588, 595-596 (Ind. Tax Ct. 2000). Although the Indiana Tax Court did not decide *Salin Bancshares* until after the audit was completed, the auditor's acceptance of the modifications that increased the original unitary group's federal income for calendar years 1990-92 was consistent with the holding in that opinion. Similarly, although the auditor did not rely on *Marhoefer Packing*, her refusal to recognize the 1993 modification was consistent with that opinion's interpretation of the nature of, and the conditions precedent required for, a refund claim.

As noted above in connection with the combined group's first argument, based on the incomplete record of the time line, it had to give the Department notice of the modification to the original group's 1993 federal income by July 13, 1997 at the latest. However, the merged group never provided the auditor, and has never provided the Department during this protest, any proof that it satisfied this condition precedent and gave the Department timely notice of that modification, nor has the Department found any

such notice in its records. In addition, neither the original unitary group, nor the protestant as its successor in interest, ever claimed a refund of any refund of FIT resulting from the reduction of the original unitary group's 1993 federal income. The auditor therefore was, and the Department is, fully legally justified in refusing to give the combined group the benefit of the decrease in the original group's 1993 federal income reported on its 1120X.

FINDING

The merged unitary group's protest is denied as to this issue.

IV. Financial Institutions Tax—Imposition—Constitutionality—Due Process Nexus (1993-96)

Financial Institutions Tax—Imposition—Constitutionality—Interstate Commerce—Substantial Nexus (1993-96)

Financial Institutions Tax—Imposition—Constitutionality—Interstate Commerce—Fairness of Apportionment and Discrimination (1993-96)

Financial Institutions Tax—Credits—Non-Resident Taxpayers—Constitutionality--Fairness of Apportionment and Discrimination (1993-96)

DISCUSSION

A. THE LACK-OF-SUBSTANTIAL-NEXUS ARGUMENT

The protestant contends that IC §§ 6-5.5-3-1(4) and -4 and IC chapter 6-5.5-4 are unconstitutional because Members A through C allegedly do not have any substantial nexus with Indiana. The merged unitary group submits that these parts of the FITA are unconstitutional on their faces because they allegedly use a so-called "economic presence" standard for nexus. The merged group submits that the alleged use of this standard violates both the dormant Interstate Commerce and Fourteenth Amendment Due Process Clauses (U.S. CONST. art. I, § 8, cl. 3 and amend. XIV, § 1, respectively). It argues that the United States Supreme Court has interpreted these constitutional provisions as requiring a physical presence in a taxing jurisdiction. In support of its lack-of-due-process-nexus argument the protestant quotes from *Miller Brothers Co. v. Maryland,* 74 S.Ct. 535 (U.S. 1954). In support of its lack-of- substantial-nexus argument the merged unitary group quotes from and discusses *Complete Auto Transit, Inc. v. Brady,* 97 S.Ct. 1076 (U.S. 1977), *Quill Corp. v. North Dakota ex rel. Heitkamp,* 112 S.Ct. 1904 (U.S. 1992), *J. C. Penney National Bank v. Johnson,* 19 S.W.3d 831 (Tenn. Ct. App. 1999) and *America Online, Inc. v. Johnson,* Cause No. 97-3786-III, slip op. (Tenn. Ch. Ct. Mar. 13, 2001), *aff'd* Cause No. M2001-00927-COA-R3-CV, 2002 Tenn. App. LEXIS 555 (Tenn. Ct. App. July 30, 2002).

A challenge to a state taxation statute on the grounds that the taxpayer in question lacks a due process or substantial nexus with the taxing jurisdiction requires the reviewing authority to evaluate the nature and extent of the contacts between that taxpayer and that jurisdiction. Such an inquiry is necessarily fact-sensitive in nature. For this reason, the authority that has to rule on an attack on either of these grounds ordinarily frames the issue as being whether the taxing authority applied the statute to the taxpayer in question in an unconstitutional way, rather than whether the statute is unconstitutional on its face. Had the present challenge been made on an as-applied basis, the Department could have ruled on it. Instead, however, the merged group has challenged IC §§ 6-5.5-3-1(4) and -4 and IC chapter 6-5.5-4 on their faces. As the Department discussed under Issue I above, Members A through C transacted business in Indiana under IC § 6-5.5-3-1(6) rather than under IC §§ 6-5.5-3-1(4) and -4. However, that circumstance does not moot the present issue, since IC § 6-5.5-3-5 makes the attribution rules of IC chapter 6-5.5-4 applicable to determine whether an intangible asset is attributable to Indiana. Accordingly, the Department is barred from ruling, and declines to rule on, the protestant's lack-of-substantial-nexus argument on the authority of IND. CONST. art. III, § 1 as interpreted in *Grazer* and *Standard Oil*, and *Sproles,* all discussed under Issue I above. If the merged unitary group wishes to pursue this argument, it will have to do so through an appeal to the Indiana Tax Court and, if necessary, to the Indiana Supreme Court, since they are the only courts in Indiana that have jurisdiction to rule on facial constitutional attacks on state tax statutes. The Department would note, however, that in any such appeal the merged group will have the heavy burden of proving "that *no* set of circumstances exists under which the [challenged] Act would be valid." *United States v. Salerno,* 107 S.Ct. 2095, 2100 (U.S. 1987) (emphasis added).

B. THE UNFAIR APPORTIONMENT AND DISCRIMINATION ARGUMENTS

The protestant argues that the apportionment formula of IC § 6-5.5-2-4 also violates the dormant Interstate Commerce Clause. Specifically, the merged unitary group contends that IC § 6-5.5-2-4 fails the internal consistency prong of *Complete Auto Transit*'s fair apportionment test. In support of its position the merged group quotes from the internal consistency discussion found in *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 115 S.Ct. 1331, 1338 (U.S. 1995). (That discussion in turn cites *Container Corporation of America v. Franchise Tax Board,* 103 S.Ct. 2933, 2942 (U.S. 1983), where the United States Supreme Court first articulated the internal and external consistency requirements for fair apportionment.) The protestant further submits that because IC § 6-5.5-2-4 allegedly unfairly apportions, it also unfairly discriminates against interstate commerce. In support of this latter proposition the merged unitary group cites *Armco, Inc. v. Hardesty,* 104 S.Ct. 2620 (U.S. 1984).

Lastly, the merged group argues that IC § 6-5.5-2-6, which grants a credit against the FIT for net income, franchise or equivalent taxes owed to a nonresident taxpayer's domiciliary state, does not completely cure the alleged constitutional defects of IC § 6-5.5-2-4. In particular, the merged group contends that IC § 6-5.5-2-6(a) imposes two alleged limitations on that credit that IC § 6-5.5-2-5 (repealed 2000), the statute granting a credit to resident taxpayers or resident members of unitary groups that engage in operations in other jurisdictions, does not impose. The protestant accordingly has asked the Department to grant it credits against

the proposed assessments for the years in question under IC § 6-5.5-2-5 instead.

The United States Supreme Court has said that "the internal consistency test focuses on the *text* of the challenged statute and *hypothesizes* a situation where [all] other States have passed an identical statute." *Goldberg v. Sweet,* 109 S.Ct. 582, 589 (U.S. 1989) (emphases added). A claim that a state tax statute's apportionment formula is unfair because it is internally inconsistent is thus a facial attack on the constitutionality of the apportionment statute. It follows that a claim that a state tax discriminates against interstate commerce because it is unfairly apportioned is also a facial attack. *See id; see also Armco,* 104 S.Ct. at 2624 (indicating that "the allegation [was] that a tax on its face discriminate[d] against interstate commerce[ ]"). Accordingly, the Department is barred from ruling, and declines to rule, on the merged group's unfair apportionment and discrimination arguments on the authority of IND. CONST. art. III, § 1 as interpreted in *Grazer* and *Standard Oil,* and *Sproles,* all discussed under Issue I above. If the merged unitary group wishes to pursue these arguments, it will have to do so through an appeal to the Indiana Tax Court and, if necessary, to the Indiana Supreme Court, since they are the only courts in Indiana that have jurisdiction to rule on facial constitutional attacks on state tax statutes.

The Department also cannot entertain the protestant's request for credit under IC § 6-5.5-2-5, not only because that request derives from the merged unitary group's constitutional arguments but also for two other, non-constitutional legal reasons. The first is that "[t]he right to the credit claimed is a privilege granted by the Government, and hence the statute is to be strictly construed in favor of the Government." *Burroughs Adding Machine Co. v. Terwilliger,* 135 F.2d 608, 610 (6th Cir. 1943) (citing *Swan & Finch Co. v. United States,* 23 S.Ct. 702, 703-704 (U.S. 1903)). "The statutes' operation will not be extended by construction." *TPQ Inv. Corp. v. State ex rel. Oklahoma Tax Comm'n,* 954 P.2d 139, 141 (Okla. 1998) (citing *Omaha Pub. Power Dist. v. Nebraska Dep't of Revenue,* 537 N.W.2d 312, 314 (Neb. 1995)). *Keyes v. Chambers,* 307 P.2d 498 (Or. 1957), is the best explanation of the reasons for strict interpretation of credit statutes that the Department has found. In *Keyes* the Oregon Supreme Court said:

> A provision allowing a credit against a state tax is, in effect, an exemption from liability for a tax already determined and admittedly valid. It is, therefore, in order to note before proceeding further that such credits, deductions or exemptions as the legislature may allow in the computation of an income tax are privileges accorded as a matter of legislative grace and not as a matter of taxpayer right. 85 CJS, 771-772, Taxation § 1099; *Palmer v. State Commission,* 156 Kan. 690, 135 P.2d 899 [(1943)]; *Southern Weaving Co. v. Query,* 207 S.C. 307, 34 S.E.2d 51 [(1945)]. By reason of their character as legislative grants, statutes relating to deductions allowable in computing income must be strictly construed against the taxpayer and in favor of the taxing authority. *Miller v. McColgan,* 17 Cal.2d 432, 110 P.2d 419, 424 [(1941)]; *Bigelow v. Reeves,* [149 S.W.2d 499, 501 (Ky. 1941)]; *Tupelo Garment Co. v. State Tax Commission,* 178 Miss. 730, 173 So. 656 [(1937)]; *State ex rel. Whitlock v. State Board of Equalization,* 100 Mont. 72, 45 P.2d 684 [(1935)]; *Cudahy v. Wisconsin Dept. of Taxation,* 261 Wis. 126, 52 N.W.2d 467 [(1952)]. The rule of strict construction to which we refer is equally applicable to tax credits. *Burroughs Adding Machine Co. v. Terwilliger* (CCA 6th) 135 F2d 608, 610; *Miller v. McColgan,* supra (at p 441). A "credit" to a tax has a far greater impact on the ultimate liability of the taxpayer than an allowable deduction and, therefore, is an item of greater importance as a subject for strict construction in favor of the government.

Id. at 501. *Accord, Burlington N. R.R. v. Strackbein,* 398 N.W.2d 144, 146 (S.D. 1986) and *Stephens v. Vermont Dep't of Taxes,* 353 A.2d 355, 356 (Vt. 1976). "The [merged group] must therefore bring itself strictly within the statutory provisions, and here it has not done so." *Burroughs Adding Machine,* 135 F.2d at 610. Indeed, the protestant, as a unitary group consisting partly of nonresident taxpayers, cannot bring itself within the terms of a credit that IC § 6-5.5-2-5 explicitly makes available only to resident taxpayers.

The second reason relates to the Department's lack of power to grant, and follows from the merged unitary group's inability to claim, a credit under IC § 6-5.5-2-5. It is well-settled Indiana administrative law that "[b]ecause administrative agencies are creations of the legislature, they generally cannot exercise powers beyond those specifically granted by the General Assembly." *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue,* 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996) (citing *Auburn Foundry, Inc. v. State Bd. of Tax Comm'rs,* 628 N.E.2d 1260, 1263 (Ind. Tax Ct. 1994)). "Administrative agencies have no common law or inherent powers; they have only the authority the legislature expressly or impliedly grants them." *Auburn Foundry, id.* Since the Department can only grant a credit under IC § 6-5.5-2-5 if a financial institution or unitary group meets all the qualifications for that credit, it follows that the Department does not even have the power, much less the discretion, to do so if the financial institution or unitary group in question does not qualify. The Department can only enforce the FITA as it is, not as the protestant would like it to be. If the merged unitary group wants the Department to have that kind of discretion (constitutional issues aside), it needs to petition the legislature to amend the FITA.

FINDING

The merged unitary group's protest is denied as to these issues.

V. Tax Administration—Negligence Penalties (1993-96)—Reasonable Difference of Opinion as to Liability for Tax

The protestant argues that the Department should abate the proposed negligence penalties for calendar years 1993-95 and the periods ending March 31, 1996 and December 31, 1996. In the merged unitary group's view a reasonable difference of opinion exists as to whether the "economic presence" theory of nexus under the FITA is constitutional, creating reasonable cause for the

abatement of the penalties for these periods.

IC § 6-5.5-7-1(a) (1993) requires the Department to assess the negligence penalty prescribed in IC § 6-8.1-10-2.1(b) (1993), which is part of the general negligence penalty provision of the TAA, on any FIT taxpayer that fails to make payments of that tax as IC chapter 6-5.5-6 requires. IC § 6-8.1-10-2.1(d) and 45 IAC § 15-11-2(c) (1992) (1996) require the Department to waive the penalty if the taxpayer makes a showing of reasonable cause; the latter subsection defines "reasonable cause," while 45 IAC § 15-11-2(b) defines "negligence."

Generally speaking, if a taxpayer has a reasonable, good faith basis for failing to pay a listed tax, that basis constitutes reasonable cause to abate any negligence penalty the Department proposes to assess, or in fact assesses, for that failure. *Indiana Dep't of State Revenue v. Harrison Steel Castings Co.,* 402 N.E.2d 1276, 1278-1279 (Ind. Ct. App. 1980), *overruling, id.* at 1279 n.2, *Indiana Dep't of State Revenue v. Sohio Petroleum Co.,* 352 N.E.2d 95, 101-102 (Ind. Ct. App. 1976). The Department recognizes that a difference of legal opinion on the constitutionality of "economic presence"-based financial institutions franchise tax statutes exists. However, determining whether that difference of opinion is *reasonable,* i.e. whether the original group had, and the merged group has, a reasonable basis for their failure to pay the FIT the Department proposes to assess would require it to examine the validity of the protestant's facial constitutional attacks on IC § 6-5-5-2-4 and –6. IND. CONST. art. III, § 1 as interpreted in *Grazer* and *Standard Oil,* and *Sproles,* all forbid the Department from engaging in such an examination for the reasons discussed under Part A of Issue I, and Issue IV, above. The Department cannot do indirectly what it is forbidden, and lacks authority, to do directly; it cannot go through a constitutional back door if it is forbidden to go through the constitutional front door. If the merged unitary group wants relief from the negligence penalties for these periods, it can seek such relief in an appeal to the Indiana Tax Court if it so chooses, together with any constitutionally grounded challenge to its proposed substantive tax liability for the same periods it may choose to make.

FINDING

The merged unitary group's protest is denied as to this issue.

VI. Tax Administration—Negligence Penalties (1990-92)—Reasonable Cause—Merger and Layoff of Compliance Personnel

The protestant contends that reasonable cause exists to abate the proposed negligence penalties for calendar years 1990-92 due to the "reverse acquisition" merger of the original unitary group and attendant layoff of tax compliance personnel. The merged unitary group alleges that these events caused it to fail to timely report certain adjustments to its federal corporate returns to the Department. These adjustments were presumably made in the RARs for calendar years 1990-91, and the 1120X for calendar year 1992, of the original group that neither it nor the merged group produced until the audit.

However, the auditor did not propose the negligence penalties for these years based on the original or merged unitary groups' failures to give the Department notice of modifications to federal income, i.e. for failing to comply with IC § 6-5.5-6-6. As noted in the Statement of Facts, the auditor did so because the original group failed to follow the regulations on sourcing of loan, credit interest and fee receipts and failed to report and pay the tax on such items. Since the merged group has argued for abatement of the penalties for these years on grounds other than those that the auditor used, the protestant has failed to meet its burdens of persuasion and proof on this issue that reasonable cause exists to abate these penalties. IC § 6-8.1-5-1(b).

FINDING

The merged unitary group's protest is denied as to this issue.

DEPARTMENT OF STATE REVENUE

02990487.LOF

LETTER OF FINDINGS NUMBER: 99-0487
Income Tax
For the Years 1996-1999

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. Income Tax-Imposition

Authority: IC 6-3-2-1, IC 6-3-1-8, 26 USC 1366.

STATEMENT OF FACTS

The taxpayer is a shareholder of an Indiana sub chapter S corporation. The Indiana Department of Revenue, hereinafter referred to as the "department," performed an investigation of the sub chapter S corporation. During the investigation, the department learned that the taxpayer had not reported his share of the corporate income on his personal income tax return. The department assessed

adjusted gross income tax on the taxpayer's share of the sub chapter S corporation income, penalty, and interest against the taxpayer. The taxpayer protested this assessment and a hearing was scheduled for September 3, 2003. The taxpayer failed to appear or offer any other documentation on his behalf. Therefore, this Letter of Findings is based on the file.

I. Income Tax-Imposition

DISCUSSION

Indiana imposes an adjusted gross income tax on all residents. IC 6-3-2-1. A taxpayer's Indiana income is determined by starting with the federal income and making certain adjustments. IC 6-3-1-8. Income from a sub chapter S corporation flows through to the individual shareholder's personal income for federal tax purposes. 26 USC 1366. Therefore, it also flows through to the individual shareholder's personal income for Indiana tax purposes. The taxpayer failed to report and pay the taxes owing on his share of the income from the sub chapter S corporation. The department properly assessed adjusted gross income tax on the shareholder's income which flowed through from the sub chapter S corporation.

FINDING

The taxpayer's protest is denied

DEPARTMENT OF STATE REVENUE

0220000267.LOF

LETTER OF FINDINGS NUMBER: 00-0267 ITC
ADJUSTED GROSS INCOME TAX
For Years 1992, 1993, AND 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 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 – Windfall Profit Tax Refund

Authority: None cited.

Taxpayer protests exclusion of windfall profit tax deduction.

II. Adjusted Gross Income Tax – Net Operating Loss Calculation

Authority: IC § 6-3-2-2.6; IC § 6-3-2-12; *Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance*, 505 U.S. 71 (1992)

Taxpayer protests inclusion of foreign dividends in the Department's calculation of net operating losses.

III. Adjusted Gross Income Tax – Net Operating Loss Calculation

Authority: IC § 6-3-2-2.6; IC § 6-3-1-20; IC § 6-3-1-21; IC § 6-3-2-2

Taxpayer protests inclusion of nonbusiness income in the Department's calculation of net operating losses.

IV. Adjusted Gross Income Tax – Computational Errors

Authority: None cited.

Taxpayer protests the assessment of gross income tax on the possible double counting of receipts from taxpayer sales made to partner. Taxpayer also maintains that the net operating loss for 1991 was incorrect.

V. Adjusted Gross Income Tax – Net Operating Loss Carryforward

Authority: None cited.

Taxpayer protests the reduction in Net Operating Loss available for carryforward from 1991.

STATEMENT OF FACTS

Taxpayer is a Delaware corporation with worldwide operations, including locations within the state of Indiana. Taxpayer filed a timely protest of four audit adjustments. Two protests related to the calculation of net operating losses are treated as a single issue for this LOF.

I. Adjusted Gross Income Tax – Windfall Profit Tax Refund

DISCUSSION

For adjusted gross income tax purposes the auditor adjusted the foreign source dividend deduction (line 31 on the 1992 tax return). Included in this amount was a deduction for windfall profit tax refund, which was not attributed to Indiana. Review of the file finds that the auditor inadvertently erred in the computation of the foreign source dividend deduction. As a result, the windfall profit tax refund deduction was disallowed in error. Therefore, the taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

II. Adjusted Gross Income Tax – Net Operating Loss Calculation

Taxpayer protested the Department's calculations of taxpayer's net operating loss, challenging the exclusion of taxpayer's foreign source dividend adjustment in the computation of net operating loss carry forward for years 1992, 1993, and 1994. The Taxpayer's argument is as follows:

> Taxpayer asserts that the Department was incorrect in its foreign source dividend adjustment to the computation of net operating loss available for carryforward for years 1992, 1993, and 1994. *For purposes of computing adjusted gross income (loss for the years at issue*), the Taxpayer was allowed to deduct 85% of its foreign sourced dividends. However for the purpose of calculating the net operating loss available for carryforward, the auditor's adjustment seeks to add back this allowable deduction –i.e. Taxpayer is allowed to deduct 85% of its foreign sourced dividends for determining [adjusted gross] income, but it must add back this deduction in determining the net operating loss available for carryforward. *(Emphasis added)*
>
> ….
>
> Taxpayer protest letter of March 24, 1999, pages 2 & 3.
>
> The applicable statute, IC § 6-3-2-2.6 states in relevant part:
>
> (b) …the amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's income derived from sources within Indiana is determined, under section 2 of this chapter, for the same taxable year during which each loss was incurred.
>
> Department directs the Taxpayer's attention to the language of IC 6-3-2-12(b), which states:
>
> A corporation that includes any foreign source dividend in its adjusted gross income for a taxable year is *entitled to a deduction from that adjusted gross income*. The amount of the deduction equals the product of:
>
> the amount of the foreign source dividend included in the corporation's adjusted gross income for the taxable year; multiplied by the percentage prescribed in subsection (c), (d), or (e), as the case may be.
>
> The aforementioned subsections (c), (d), and (e) allow corporate taxpayers to receive a one hundred percent (100%) deduction for foreign source dividends received from corporations in which a taxpayer has an eighty percent (80%) or larger ownership interest; an eighty-five percent (85%) deduction for dividends received from corporations in which a taxpayer has a fifty to seventy-nine percent (50%-79%) percent ownership interest; and a fifty percent (50%) deduction for dividends received from corporations in which a taxpayer has less than a fifty percent (50%) ownership interest. IC 6-3-2-12(c)-(e). *(Emphasis added)*

This statutory language is cogent and clear. IC § 6-3-2-12 authorizes pro rata deductions (based on the percentage ownership of the payor by the payee) of certain foreign source dividend income *from* adjusted gross income, not as part *of* the computation of adjusted gross income. There is no similar statutory deduction for the computation of an Indiana net operating loss to be carried forward, which begins with federal adjusted gross income and is modified according to the Indiana statute. Foreign source dividends are part of federal adjusted gross income and are not one of the modifications allowed by IC § 6-3-2-2.6 in arriving at the Indiana net operating loss to be carried forward. Indiana has a specific deduction for foreign source dividends in calculating Indiana adjusted gross income, but there is no statutory provision for adjusting federal taxable income in calculating the Indiana net operating loss to be carried forward. Consequently, taxpayer's protest of the foreign source dividend adjustment is denied.

Taxpayer also cited to the *Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance*, 505 U.S. 71 (1992) case as proof the department could not treat foreign and domestic dividends different. Taxpayer fails to demonstrate a disparate treatment between foreign and domestic dividends. The calculation of net operating losses was intended to calculate the net losses, which, as noted above, requires the addition of offsetting amounts-including foreign and domestic dividends.

FINDING

Taxpayer's protest is denied.

III. Adjusted Gross Income Tax – Net Operating Loss Calculation

Taxpayer protests the Department's calculations of taxpayer's net operating loss, challenging the inclusion of taxpayer's non business income in the computation of net operating loss carry forward for years 1992, 1993, and 1994. The Taxpayer's argument, referring to the audit summary worksheet adjustment adding in the income in question, is as follows:

> ….
>
> The audit workpapers do not provide an explanation for this adjustment. Since the dividends are classified as "business," [as part of the audit adjustment] Taxpayer asserts that there is no statutory or regulatory support for the auditor's adjustment. If the Taxpayer is permitted a business dividend deduction for computing adjusted gross income, such deduction should also be included in the computation of the net operating loss available for carryforward. Taxpayer protest letter of March 24, 1999, pages 2 & 3.
>
> The applicable statute, IC § 6-3-2-2.6 states in relevant part:
>
> (b) …the amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's income derived from sources within Indiana is determined, under section 2 of this chapter, *for the same taxable year during which each loss was incurred. (Emphasis added)*
>
> The calculation of an Indiana net operating loss to be carried forward begins with federal adjusted gross income and is modified

according to the Indiana statute. With the business net operating loss reduction, the auditor calculated the taxpayer's Indiana NOL by adding back income the parent received from various entities, all of which the audit identified as unitary with the parent. The taxpayer's argument implies that the auditor erred in doing so, contending that these items of income were nonbusiness income, did not have Indiana sources, and, therefore, should have been allocated to the parent's commercial domicile outside Indiana instead of being apportioned.

This premise is incorrect. IC § 6-3-1-21 states that "[t]he term 'nonbusiness income' means all income other than business income." *Id.* IC § 6-3-1-20 in turn states that:

> [t]he term 'business income means income *arising from transactions and activity in the regular course of the taxpayer's trade or business* and includes income from tangible and intangible property of the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations. *Id* (*emphasis added*)

IC § 6-3-2-2.6(a) states that the first step in calculating an Indiana NOL is to determine Indiana AGI as specified in IC § 6-3-2-2. Subsection (a) of the latter section states that "[w]ith regard to corporations and nonresident persons, 'adjusted gross income derived from sources within Indiana', for purposes of this article, shall mean and include: … (5) income from stocks, … if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter." *Id.* IC § 6-3-2-2.2(g) states that "[r]eceipts in the form of dividends from investments are attributable to this state if the taxpayer's commercial domicile is in Indiana." *Id.* The parent's commercial domicile is in a state other than Indiana, so none of the income the parent received is attributable to Indiana based on the taxpayer's commercial domicile. However, the auditor reviewed the sources of the income at issue and at the appropriate points within the audit report documented the basis for finding taxpayer had a unitary relationship with the various entities at issue. The taxpayer has failed to provide support for its argument that the relationship between the parent and the various entities was non-unitary. Therefore the Department finds that the income the parent received from these entities was unitary income, and therefore apportionable.

FINDING

Taxpayer's protest is denied.

IV. Adjusted Gross Income Tax – Computational Error

Taxpayer protests an error in listing amount of addback for a corporation. Sustained subject to audit verification.

FINDING

Taxpayer's protest is sustained subject to audit verification.

V. Adjusted Gross Income Tax – Net Operating Loss Carryforward

Taxpayer protests an error in the amount of the NOL from 1991 that was available for carryforward. This year was not audited, but the loss carryforward will effect future periods. Audit will review 1991 and will verify that the NOL of 1991 is calculated consistent with the findings in Issue II of this LOF.

FINDING

Taxpayer's protest is sustained subject to audit verification.

DEPARTMENT OF STATE REVENUE

0120000362.LOF

LETTER OF FINDINGS: 00-0362
Indiana Individual Income Tax
For the 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax Deficiency Carry-Over.

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); IC 6-8.1-5-2(a).

Taxpayers argue that the alleged income tax deficiency B first reported to them in 1999 B was the result of an under-reporting error attributable to the Department of Revenue (Department). Taxpayers maintain that the 1999 deficiency can be traced to the Department's failure to properly record one of taxpayers' 1995 estimated quarterly tax payments.

STATEMENT OF FACTS

The Department sent taxpayers a "Notice for Payment" dated October 7, 1999. The notice indicated that taxpayers owed an additional amount of 1998 state income taxes. According to the taxpayers, they determined that they did not owe the taxes but that the purported 1998 deficiency was entirely attributable to the Department's own recording error which occurred during 1995.

The taxpayers and the Department exchanged correspondence and phone calls but were unable to resolve the disputed issue. The taxpayers eventually submitted a protest, an administrative hearing was conducted during which taxpayers' representative explained the basis for their protest, and this Letter of Findings results.

DISCUSSION

I. Individual Income Tax Deficiency Carry-Over

Taxpayers argue that the alleged 1998 tax deficiency is attributable to the Department's own record-keeping error. In addition, taxpayers argue that because the Department's under-reporting error occurred in 1995, the claim for 1998 income taxes B first submitted to the taxpayers in 1999 B is untimely and is barred by the statute of limitations.

It is undisputed that the taxpayers made quarterly estimated income tax payments during 1995. According to taxpayers, the Department failed to properly record one of these 1995 payments. However, the 1995 shortfall did not become immediately apparent because of the manner in which taxpayers elected to pay their individual state income taxes. The 1995 shortfall did not become immediately apparent because taxpayers continued to make timely, successive quarterly estimated payments for the years following 1995. These successive payments had the effect of "covering" the original 1995 deficiency. However, the 1995 deficiency was never eliminated; it was simply obscured by each subsequent quarterly tax payment. The 1995 deficiency "dominoed" its way through the years and did not manifest itself until 1998.

Taxpayers maintain the Department should abate the assessment for 1998 taxes because the Department failed to properly credit the taxpayers for the 1995 quarterly payment. However, because of the lapse in time and because the taxpayers have dealt with different bank entities during the period, taxpayers are unable to now produce information which confirms taxpayers' version of these events.

IC 6-8.1-5-1(a) states that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." If the department believes that the person has not paid the proper amount of tax, "The department shall send the person a notice of proposed assessment through the United States mail." Id. This is what apparently occurred during 1999 at the time taxpayers received written notice from the Department. Nonetheless, taxpayers argue that the Department is simply wrong. Taxpayers steadfastly maintain that they paid all of the quarterly income tax payments and that they owe no additional tax.

Indiana's statute provides that, "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).

The Department has no reason whatsoever to doubt the taxpayers' good faith or veracity. However, even considering the undoubted difficulty in producing evidence of bank transactions long-past, the Department is in no position to grant taxpayers the requested relief. The statute clearly places upon taxpayers the burden of demonstrating that the 1999 notice of assessment was wrong. For the Department to now ignore this standard and abate the assessment entirely on the basis of the taxpayers' say-so would fly in the face of the dictate imposed under IC 6-8.1-5-1(b).

Taxpayers posit a secondary argument. Because they did not receive notice of the proposed assessment until October 1999 and because the assessment is now attributable to a disputed 1995 quarterly payment, the 1999 assessment was untimely and is barred by the three-year statute of limitations.

The limitations period is defined under IC 6-8.1-5-2(a) which states that, "Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed or any of the following: (1) the due date of the return." IC 6-8.1-5-2(a). According to taxpayers, because the 1999 assessment can be traced to an alleged underpayment of 1995 taxes B presumably due no later than April 15, 1996 B the Department's assessment B dated October 7 B is void pursuant to IC 6-8.1-5-2(a).

Taxpayers' argument fails because the October 7, 1999, correspondence was not a notice that taxpayers owed 1995 income tax. It was a notice that taxpayers owed additional 1998 income taxes. The 1998 shortfall can be traced back to a mistake which occurred during 1995, but the Department provided timely notice that taxpayers were required to pay 1998 taxes. Evidently, taxpayers' first 1996 quarterly payment was sufficient to cover the original 1995 deficiency; for approximately three years, each successive quarterly payment covered the previous shortfall until B for whatever reason B the deficiency found its way to the surface, and the Department determined that taxpayers did not pay all of their 1998 income taxes. It was not until 1998 that the Department reasonably believed that taxpayers had not reported the amount of tax due. The October 7, 1999, was timely submitted, and the proposed assessment is not barred by the three-year limitations period specified under IC 6-8.1-5-2(a).

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220010251.LOF

LETTER OF FINDINGS: 01-0251
Indiana Corporate Income Tax
For the Years 1989 through 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. Credit for Payment of Estimated Quarterly Tax.

Authority: IC 6-8.1-5-1(b).

Taxpayer argues that the Department of Revenue failed to properly credit it for a 1995 estimated quarterly payment purportedly made by means of an electronic funds transfer.

II. Computation Errors/Failure to Offset Liability.

Authority: IC 6-8.1-5-1(b).

Taxpayer maintains that the audit report failed to account for a credit contained in the audit report. In addition, taxpayer maintains that the audit report contains certain computational errors and omissions.

III. Proceeds from the Sale of Publishing Company – Gross Income Tax.

Authority: IC 6-2.1-1-2(a); IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); Bethlehem Steel v. Indiana Dept. of State Revenue, 597 N.E.2d 1327 (Ind. Tax Ct. 1992); 45 IAC 1-1-19; 45 IAC 1-1-21; Black's Law Dictionary (7th ed. 1999).

Taxpayer argues that the Department of Revenue (Department) erred in finding that money received from the sale of a publishing company's Indiana distribution center was subject to the state's gross income tax. Alternatively, taxpayer argues the Department should not have imposed gross income tax against all of the proceeds attributable to the sale of this Indiana asset.

IV. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer requests that the Department exercise its discretion to abate the ten-percent negligence penalty.

DISCUSSION

Taxpayer is an out-of-state entity in the business of designing and manufacturing specialized equipment for both commercial and military use. During a number of years considered by the audit report, taxpayer owned a publishing company. That publishing company maintained a distribution center within the state.

The Department conducted an audit of taxpayer's business and tax records covering 1989 through 1996. The audit review determined that taxpayer owed additional Indiana corporate income tax. The taxpayer submitted a protest of the Department's decision, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings Results.

DISCUSSION

I. Credit for Payment of Estimated Quarterly Tax.

Taxpayer argues that the audit report failed to properly credit it for a quarterly payment of estimated taxes. Taxpayer indicates that it made the 1995 estimated payment by means of an electronic funds transfer from its bank.

The rule is found at IC 6-8.1-5-1(b) which states that, "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." Under IC 6-8.1-5-1(b), the proposed assessment is provided a rebuttable presumption that the amount of the assessment is correct. Taxpayer has the burden or demonstrating the assessment is incorrect.

Taxpayer has provided a copy of its own internal business records indicating that the quarterly payment was authorized and was actually made. Taxpayer has provided a copy of its bank statement indicating that the bank made the payment. Taxpayer has provided a copy of the bank's own records indicating that the payment was made. In addition, these same records indicate that a second payment of Indiana taxes – a 1994 extension payment – was transferred to the Department by the same means and was received on the same date as the uncredited payment. This second payment was received by the Department and was credited to the taxpayer's account.

The Department's records do not indicate that the 1995 quarterly payment was received but speculates that the 1995 payment was "probably refunded." There is no substantive evidence to support that conclusion.

The taxpayer has met its burden of demonstrating that – to the extent it failed to receive credit for the amount of the 1995 quarterly payment – the proposed assessment is incorrect. Accordingly, taxpayer is entitled to receive credit for the quarterly payment.

FINDING

Taxpayer's protest is sustained.

II. Computation Error/Failure to Offset Liability.

Taxpayer maintains that the audit report contains certain errors and omissions. Specifically, taxpayer indicates that it did not receive credit for an amount labeled in the audit report as "Funds to Offset Open Liability." In addition, taxpayer maintains that it was entitled to a refund of certain collection fees.

The Department's records indicate that the amount labeled as "Funds to Offset Open Liability" was refunded to the taxpayer on April 3, 2002. Included in that refund check were three of the disputed collection fees. The Department's records indicate that four of the collection fees remain unrefunded.

Under IC 6-8.1-5-1(b), the audit report – including such matters as the disposition of the amount labeled as "Funds Available to Offset Liability" – is presumed correct. Under that same provision, taxpayer has the burden of demonstrating that the assessments are incorrect.

Taxpayer raises questions which are essentially related to computation, accounting, and recordkeeping procedures. These questions are outside the purview of the administrative hearing process and not subject to satisfactory resolution in a Letter of Findings intended to address conflicting interpretations of tax law. Nonetheless, taxpayer has demonstrated that pursuant to IC 6-8.1-5-1(b), the questions it raises are not entirely frivolous or unfounded. Because there are no legal issues attached to these questions, and because taxpayer is entitled to a resolution of those questions, the audit division is requested to undertake a supplemental review of the specific claimed errors and make whatever corrections it deems appropriate.

FINDING

Subject to the results of the supplemental audit review, taxpayer's protest is sustained.

III. Proceeds from the Sale of Publishing Company – Gross Income Tax.

Until 1995, taxpayer owned a publishing company. The publishing company had numerous physical assets which included an Indiana book distribution center. The distribution center consisted of inventory, physical plant, and associated equipment. However, the publishing company also maintained inventory in 33 other states and plant/equipment assets in seven other states. The publishing company was headquartered at an out-of-state location. Taxpayer maintains that the publishing company's commercial domicile was in that same out-of-state location as its original headquarters.

In 1995, taxpayer sold the publishing business resulting in what taxpayer modestly describes as a "substantial profit."

Taxpayer reported the proceeds from the sale of the Indiana inventory in its tax calculation. Initially, it failed to report the proceeds from the Indiana plant/equipment assets. The Indiana audit corrected that oversight, and taxpayer does "not dispute that these proceeds [plant/equipment] belong to Indiana."

What is at issue is the "substantial profit" taxpayer received. Taxpayer calculates the "substantial profit" as follows: Prior to the sale, taxpayer estimated it would receive a certain amount from the sale of the publishing company based upon the value of its physical assets. Strictly for purposes of illustration, taxpayer evaluated the publishing company's assets and determined that it would receive 10 million dollars from the sale. It did not receive 10 million; it received (again for purposes of illustration) 15 million dollars. Taxpayer describes the difference between the original estimated value of the company and the amount it received (5 million) as attributable to the publishing company's "goodwill."

Taxpayer maintains that none of the "goodwill" is attributable to the Indiana distribution center. Instead, it attributes the 5 million dollars to the "creative genius and business acumen that allowed [taxpayer] to get an 'extraordinary price' for the publishing division." According to taxpayer, none of the 5 million dollars is attributable to Indiana but that entire 5 million dollars is attributable to its own out-of-state location where the business decisions leading to the sale of the publishing company were made. Specifically, taxpayer "believe[s] that Indiana's connection to the goodwill transaction is modest" and that none of the proceeds from the sale of the publishing company's goodwill were Indiana gross receipts.

The audit disagreed finding that the proceeds from the sale of the plant, equipment, inventory, and a *portion* of the goodwill – which the audit described as "Indiana goodwill" – were subject to the state's gross income tax scheme and were taxable at the "high rate."

Essentially, taxpayer argues that there is no such thing as "Indiana goodwill" and only the proceeds from the sale of the Indiana inventory and the Indiana plant/equipment were subject to gross income tax.

Indiana imposes a gross income tax upon the entire gross receipts of a taxpayer who is a resident or domiciliary of Indiana. IC 6-2.1-2-2(a)(1). For the taxpayer who is not a resident or domiciliary of Indiana – such as taxpayer – the tax is imposed on the gross receipts which are derived from business activities conducted within the state. IC 6-2.1-2-2(a)(2).

For purposes of calculating a taxpayer's "gross income," IC 6-2.1-1-2(a) states that, "Except as expressly provided in this article, 'gross income' means all the gross receipts a taxpayer receives (1) from trades, businesses or commerce [and]... (3) from the sale, transfer, or exchange of property, real or personal, tangible or intangible."

The regulations explain further. 45 IAC 1-1-19 states the gross income includes "Receipts from the conduct of a trade or business situated and regularly carried on in Indiana, including activities incident thereto (such as the disposal of *capital assets* or other property acquired or used in carrying on such trade or business in Indiana)." (*Emphasis added*). The term "capital asset" is defined at 45 IAC 1-1-21 which states, in relevant part, that, "[T]he Department extends through this regulation the definition of

capital assets to include all other assets which are not considered to be inventory or stock-in-trade, even though such assets are intangible in nature, i.e., stocks, bonds, patents, trademarks, notes, copyrights, *goodwill*, etc., or current in nature, i.e. disposed of within the tax year." (*Emphasis added*).

The term "goodwill" is defined as including, "a business's reputation, patronage, and other intangible assets that are considered when appraising the business." Black's Law Dictionary 703 (7th ed. 1999).

It is apparent that when a business is sold, the proceeds from the sale are subject to Indiana's gross income tax. It is equally apparent that those proceeds attributable to the value of the business's goodwill are also subject to gross income tax. Presumably, taxpayer would agree with the general proposition that if the publishing company was located entirely within this state, the value attributable to the publishing company's goodwill would plainly be subject to Indiana's gross income tax.

However, the publishing company's operation was spread out over numerous out-of-state locations. It is taxpayer's contention that the value of the goodwill is attributable entirely to one state; the taxpayer's own out-of-state commercial domicile. In support, taxpayer cites to Bethlehem Steel v. Indiana Dept. of State Revenue, 597 N.E.2d 1327 (Ind. Tax Ct. 1992). In that case, the court found that the gross receipts petitioner received from safe harbor lease transactions were not derived from an Indiana source and were not subject to gross income tax. Id. at 1336-37. However, taxpayer's situation is distinguishable from Bethlehem Steel. In that case, the U.S. Congress legislated certain investment credits to encourage businesses to invest in new machinery in order to alleviate a national recession. Id. at 1328 n.1. Because the petitioner (Bethlehem Steel) did now owe federal income tax during the relevant years, it took advantage of a provision allowing it to enter into a sale-leaseback agreement with another company by which it sold the tax credits to that out-of-state company. Id. at 1328. The Tax Court found that the money received from the sale of the tax credits was not subject to Indiana's gross income tax. Id. at 1336-37. The court found that the tax credits were entirely unrelated to the petitioner's Indiana location and the equipment found at that location. Id. at 1337. The court concluded that the income received from the sale of the tax credits was unrelated to Bethlehem Steel's Indiana operation.

However, the proceeds from the sale of the publishing company's goodwill are not analogous to the proceeds received from the sale of Bethlehem Steel's tax credits. The sale of the publishing company's goodwill was inseparable from the sale of the publishing company itself. Taxpayer could not have severed the publishing company's "goodwill" and sold it to the highest bidder because the goodwill was inextricably linked to the publishing company itself. The publishing company, its physical assets, and its goodwill went hand-in-hand unlike Bethlehem Steel which was able to sever the tax credits and market them to an out-of-state entity. After Bethlehem Steel sold its tax credits, its Indiana operation remained entirely unaffected. After taxpayer sold the publishing company, it had entirely rid itself of Indiana distribution center together with all the other assets of the publishing company. The day after Bethlehem Steel sold its tax credits, its Indiana steel operated continued as before because the tax credits were unrelated to the Indiana assets. The day after taxpayer sold the publishing company, it was entirely out of the book publishing business. The Indiana distribution center, the inventory, the equipment, the building, and the goodwill belonged to someone else.

The Department is unable to agree with taxpayer's contention that the goodwill was entirely attributable to its own out-of-state business acumen and creative genius. The goodwill – and its associated cash value – was part-and-parcel with the inherent value of the publishing company and its associated physical assets; a portion of that goodwill is inextricably linked with the publishing company's Indiana distribution center.

Nonetheless, taxpayer offers a related challenge to the audit's assessment of additional gross income taxes. It proposes that the portion of the goodwill the audit attributed to the Indiana distribution center is overstated.

There is no reasonable contention that the value of the publishing company's goodwill (the 5 million dollars in the example above) is entirely attributable to the Indiana distribution center. Clearly, the Indiana distribution center was but one cog in a large book publishing business. However, the audit calculated the value of the Indiana goodwill "by taking the percentage of Indiana assets at cost (inventory, PPE and plant) and multiplying the percentage times the sale price of [publishing company's] goodwill." In doing so, the audit concluded that approximately 44 percent of the publishing company's goodwill was attributable to the Indiana distribution center.

Taxpayer challenges the 44 percent calculation on the ground that the publishing company's sales within the state of Indiana were relatively minor when compared to the publishing company's sales to other states. Instead, the majority of the publishing company's book sales were to larger and more populous states.

The Department is unable to accept the contention that the value of the publishing company's in-state goodwill should be based upon the amount of book sales made to the various states. Having found that the value of the goodwill was part-and-parcel with the value of the publishing company itself, the method used by the audit to attribute the Indiana goodwill appears entirely reasonable. The audit used a method of comparing the in-state and the out-of-state goodwill based upon the publishing company's in-state and out-of-state assets. After determining that 44 percent of the publishing company's buildings, equipment, and inventory were found within this state, it is not unreasonable to conclude that 44 percent of the publishing company's goodwill is associated with the assets contained within this state. Taxpayer would parcel out the goodwill based upon the percentage of in-state and out-of-state book sales. Such a method would be logically defensible if the taxpayer had sold the publishing company's customer list or its sales network. However, such is not the case because taxpayer sold the publishing company in its entirety. The buyer did not purchase and did not

acquire the publishing company's past sales history; the buyer acquired the publishing company lock, stock, and barrel. The Department concludes that the audit's method of attributing the in-state goodwill of the publishing company to the in-state assets of the publishing company was neither unreasonable nor unwarranted.

FINDING

Taxpayer's protest is respectfully denied.

IV. Abatement of the Ten-Percent Negligence Penalty.

The audit assessed a ten-percent negligence penalty against the tax deficiency owed. Taxpayer argues that the penalty is unjustified because it exercised reasonable caution, care, and diligence in determining its Indiana tax liability. In addition, taxpayer maintains that a certain amount of the deficiency was attributable to legitimate but conflicting interpretations of the tax laws.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayer's position is that a certain amount of the additional assessment is attributable to simple oversights and to well-founded, but conflicting interpretation of the relevant tax law. In sum, taxpayer is of the opinion that it has acted in a thoughtful and conscientious manner in regard to its Indiana state tax liabilities.

The Department agrees that in any audit of a substantial and complex business there may be room for legitimate disagreements. Nonetheless, a substantial amount of taxpayer's own additional assessment stems from its failure to report the proceeds from the 1995 sale of the publishing company's Indiana distribution center. Although there may be room for disputing whether any of the proceeds attributable to the sale of the goodwill associated with that distribution center were subject to Indiana's gross income tax, there can be no dispute that the sale of the plant and equipment – valued in the millions of dollars – was subject to gross income tax. Although this omission may be blamed on taxpayer's "change in tax reporting software programs," the Department is unable to agree that such a substantial omission is indicative of the "reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04-20010262.LOF

LETTER OF FINDINGS NUMBER: 01-0262
Sales and Use Tax
For the Years 1999-2000

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. Sales and Use Tax-Manufacturing Exemption

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-3-2, IC 6-2.5-5-3, 45 IAC 2.2-5-10, 45 IAC 2.2-5-8(g), *Gross Income Tax Division v. National Bank and Trust Co.*, 79 N.E. 2d 651 (Ind. 1948).

The taxpayer protests the imposition of the use tax on a detro shaker and lamp bulbs for the microfiche reader.

II. Sales and Use Tax-Consumables

Authority: IC 6-2.5-3-2, IC 6-2.5-2-1, Information Bulletin #28 for Sales and Use Tax, issued June, 1992.

The taxpayer protests the imposition of the use tax on consumables.

III. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the penalty.

IV. Tax Administration-Interest

Authority: IC 6-8.1-10-1.

The taxpayer protests the imposition of interest.

STATEMENT OF FACTS

The taxpayer is a Sub-Chapter S corporation that operates a body shop which repairs and refinishes cars, converts vans, and manufactures a part used by another local company. 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 this assessment and a hearing was held.

I. Sales and Use Tax-Manufacturing Exemption

DISCUSSION

The use tax is imposed on an Indiana use of tangible personal property purchased in a retail transaction. IC 6-2.5-3-2. A number of exemptions are available from use tax, including those collectively referred to as the manufacturing exemptions. IC 6-2.5-5-3 provides for the exemption of "manufacturing machinery, tools and equipment which is to be directly used by the purchaser in the direct production, manufacture, fabrication... processing, refining, or finishing of other tangible personal property." 45 IAC 2.2-5-10 (c) further describes manufacturing machinery and tools as exempt if they have an immediate effect on the property in production. Property has such an immediate effect if the property "is an essential and integral part of an integrated process which produces tangible personal property." 45 IAC 2.2-5-8(g).

All exemptions must be strictly construed against the party claiming the exemption. *Gross Income Tax Division v. National Bank and Trust Co.*, 79 N.E. 2d 651 (Ind. 1948). All assessments made by the department are presumed to be correct. Taxpayers bear the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b).

The department assessed use tax on a detro shaker and light bulbs for a microfiche reader. The taxpayer protested these assessments. The taxpayer contends that the detro shaker and light bulbs qualify for the manufacturing exemption. Both of these items are used in the process of producing custom converted vans. The light bulbs are used in reading paint formulas with the microfiche reader. The detro shaker shakes the paint prior to the spraying of the paint onto the van. The taxpayer argues that since it must read the formula and shake the paint to convert vans, the detro shaker and light bulbs are essential and integral to the van conversion process. The department disagrees. The preparation of a material for application takes place prior to the beginning of the industrial process. Therefore, the department properly assessed use tax on the use of the light bulbs and detro shaker.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax-Consumables

DISCUSSION

The taxpayer uses many consumable items such as masking tape and disposable rags in the process of van conversion. The taxpayer protests the assessment of use tax on these consumable shop supplies. The taxpayer contends that they work with third party insurance companies that remit the payment for insured customers. According to the taxpayer, the industry practice is to pay a fixed dollar amount per repair hour for all materials used. The taxpayer lists "paint materials" on its estimates as allegedly required by the third party insurers. The taxpayer contends that the term "paint materials" includes the paint and the consumable shop supplies. The taxpayer charges sales tax on the amount of the "paint materials." The taxpayer contends that it should not have to pay use tax on the consumable shop supplies since sales tax was collected and remitted on the "paint materials" which includes the consumables.

The use tax is paid by the user or consumer of the tangible personal property. IC 6-2.5-3-2. Indiana also imposes a sales tax "on retail transactions made in Indiana. The purchaser of the tangible personal property is liable for payment of the sales tax. Merchants collect the sales tax as agents of the state and remit the tax to the Indiana Department of revenue. IC 6-2.5-2-1.

Information Bulletin #28 for Sales and Use Tax, issued June, 1992, clarifies the sales and use tax laws for motor vehicle sales and repairs. The clarification of the taxability of shop supplies is as follows:

> Consumable supplies, such as masking paper and tape, oil dri, sandpaper, buffing pads, rags and cleaning supplies, used to repair and service motor vehicles are subject to use tax if purchased exempt from sales tax. The purchaser becomes the final user of such items because its customer does not become the owner of such consumable supplies. Although the dealer may charge the customer for such items, the items are not being sold to the customer in a retail transaction. Use tax should be self assessed and remitted by the purchaser directly the Department if such consumable supplies were purchased exempt from sales tax.

In the taxpayer's situation, it is the final user of supplies such as those described in the Information Bulletin concerning the repair of the automotive vehicles. Taxpayer does not pay sales tax when it purchases the shop supplies. The shop supplies are not sold to the customer in a retail transaction. Therefore, the taxpayer owes use tax on the consumable shop supplies.

The taxpayer's contention that sales taxes were incorrectly collected and remitted to Indiana on those shop supplies does not change the taxpayer's use tax liability.

FINDING

The taxpayer's protest is denied.

III. Tax Administration-Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Pursuant to this standard, taxpayers have the duty to learn about and follow the tax laws of the state. Although the Indiana law clearly provides that taxpayers owe use tax on tangible personal property consumed in the provision of a service, the taxpayer had no system for self-assessment of use tax and ignored its obligation to remit use tax to the state. Also, the taxpayer failed to self-assess and remit the use tax on clearly taxable items such as coveralls used to keep employees clean and maintenance items. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

IV. Tax Administration-Interest

DISCUSSION

The taxpayer protests the imposition of interest. IC 6-8.1-10-1 provides that the department must assess interest if a taxpayer "incurs a deficiency upon a determination by the department." The law continues to state that "the department may not waive the interest imposed under this section." The department, therefore, has no discretionary authority to waive the interest.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20010349.LOF

LETTER OF FINDINGS NUMBER: 01-0349
Gross Income Tax
Penalty
For the Years 1996, 1997, 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

I. Gross Income Tax-Application to out of state franchisor

Authority: IC § 6-2.1-1-2; IC § 6-2.1-2-2; 45 IAC 1-1-30; 45 IAC 1-1-48**.**

Taxpayer protests the Department's assessment of gross income tax on royalties and fees received from a franchisee operating its trademark restaurants in the state of Indiana.

II. Penalty-Request for waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the Department's imposition of the 10% negligence penalty, requesting a waiver for reasonable cause.

STATEMENT OF FACTS

Taxpayer, a corporation incorporated and domiciled outside of Indiana, granted franchises to operators of its restaurants in Indiana. In May of 1997, taxpayer sold its remaining company owned restaurants to an unrelated corporation that also happened to be taxpayer's largest franchisee. Taxpayer currently functions as a franchisor. During the audit period, and pursuant to the license agreement between taxpayer and its franchisee, taxpayer owned trademarks, service marks and trade names used in the development, organization, and operation of its restaurants which feature a unique style of food. Taxpayer has established a high degree of consumer goodwill and public acceptance of its trademark, name, system of restaurants and products, over a long period of time. Franchisees, including the unrelated corporation involved in the transactions at issue in this protest, have to conform to taxpayer's manual regarding purchasing supplies, including specifying vendors, and preparing food and beverages for sale and consumption. Taxpayer retained the right of inspection of any premises and operations, the right of first refusal in the event franchisee wished to

sell, and directed insurance matters. Taxpayer was also a named insured on all policies. Taxpayer filed withholding tax returns for the periods at issue indicating that it used Indiana employees.

When a franchisee entered into a franchise agreement with taxpayer, the franchisee received the right and privilege to use taxpayer's trademarks, service marks, trade names, consumer goodwill and public acceptance in the operation of one of taxpayer's restaurants. Taxpayer received fees from the franchisee for the use of such rights and privileges. Further facts will be added as necessary.

I. Gross Income Tax-Application to out of state franchisor

DISCUSSION

In general, IC § 6-2.1-1-2(a) defines gross income as "all the gross receipts a taxpayer receives" from various sources. Subsections (1), (3), (4), and (10) are most pertinent to taxpayer's arguments in this protest. Subsection (10) is the generic catchall provision covering items not delineated in previous subsections. Therefore, "gross income means all the gross receipts a taxpayer receives from any other source not specifically described in" subsections (1) through (9). Subsection (1) describes gross receipts "from trades, business, or commerce." Subsection (3) describes gross receipts "from the sale, transfer, or exchange of property, real or personal, tangible or intangible." Subsection (4) describes gross receipts "from the performance of contracts." Any one of these subsections justifies imposing Indiana's gross income tax on taxpayer's gross receipts from its activities in Indiana.

IC § 6-2.1-2-2 imposes the tax "upon the receipt of (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." Generally speaking, whatever one chooses to call the "gross receipts" taxpayer receives—royalties, management, contract, licensing, or franchise fees—by any name, they are taxable as gross income received by taxpayer. *See*, 45 IAC 1-1-30 and 45 IAC 1-1-48. (repealed, 12-30-98). The latter regulation provides in relevant part:

> A franchise system involves a particular kind of business activity carried on by a franchisee in accordance with the terms of a contract with a franchisor. The contract generally provides for the franchisor's grant to the franchisee of the use of an exclusive brand name, patent, process, territory, advertising or other right for which the franchisee pays under a schedule of fixed or variable fees or a combination thereof. The taxability of such fees and other income of the franchisor for gross income tax purposes depends upon the business relationship of the parties, where they are incorporated and doing business, and the terms of the franchise agreement.
>
> The regulation goes on to discuss four different franchise situations. Number four is directly on point:
>
> Out of state franchisor with Indiana franchisees: the franchisor is taxable upon that part of his fees and income derived from activities in this state, including the operation of an in-state situs, the rental of real and personal property in Indiana, and the performance of services for in-state franchisees, more than a minimal or incidental amount of which takes place in the state.

Taxpayer argues its licensing a third party (a corporation that is incorporated and domiciled outside of Indiana) to operate taxpayer's Indiana restaurants, and the signing of the Agreement (which took place in another state), trumps all evidence of its connections to Indiana.

The granting of the license is not, contrary to taxpayer's argument, the sole defining parameter of its business relations with its Licensees. The granting of a license, wherever that takes pace, is a nullity if the licensor and licensee do not take some positive action in accordance with, and pursuant to, the directions and mandates set forth in the license agreement. If the parties did not so act, no restaurants are built, no food is sold, and no money is earned to be passed up the chain from restaurant to licensee to licensor. The granting of a power is an inchoate possibility, an intangible, and merely exists until such a time as it is acted upon.

The License Agreement itself outlines taxpayer's retained rights: to review licensee's sales reports, specify approved vendors, inspect the premises of the restaurants. Taxpayer also retained the right of first refusal when a licensee or restaurant wished to sell. Taxpayer also provided insurance and was the named "certificate holder" on the policy and is listed as an "Additional Insured/Loss Payee." The Agreement is replete with a plethora of evidence of taxpayer's continual control of its restaurant operations. Licensee must "conform" to taxpayer's control of the menu, i.e., the "manner of preparing and serving the Licensed Products," the food under taxpayer's brand name. Licensee must maintain "uniform and high standards of quality, service, appearance" in all the restaurants. This "maintenance" is "necessary in order to maintain [taxpayer's] public image and widespread consumer acceptance." Everything is within taxpayer's "sole judgment and discretion" regarding suppliers and vendors, plates, napkins, cups, etc. With respect to marketing and advertising, taxpayer has numerous commandments licensee must follow; marketing is essential "to the furtherance of the goodwill and public image of [taxpayer]." With respect to trademark standards, licensee "acknowledges that [taxpayer] is the sole owner of the Trademarks and all goodwill relating thereto;" they are the "sole and exclusive property of [taxpayer's]." Licensee does not acquire any "right, title, interest or claim of ownership in the Trademarks." Licensee's use of Trademarks, any and all goodwill and benefits shall inure solely to the benefit of [taxpayer] and shall be deemed to be the sole property of [taxpayer]."

The transactions here at issue—the receipt of franchise fees from taxpayer's Indiana franchisees—are inextricably related to taxpayer's activities within the state. The receipt of the franchise fees is an amount determined by and directly related to taxpayer's purposeful Indiana activities. It cannot be said that the transactions occurred entirely where the license agreements were signed because, absent the Indiana "connection" and the taxpayer's Indiana activity, the franchise agreements become abstract paper

agreements of no value to the taxpayer and of no interest to the Indiana taxing authorities. In addition, the substantial portion of the activities performed in exchange for the franchise fees take place in Indiana.

What taxpayer sells, and what the franchisee purchases, is the right to vigorously exploit the intangible asset within the state of Indiana. Taxpayer's Indiana source income results from the utilization of the intangible within the state of Indiana made possible by the taxpayer's decision to establish a physical presence within the state of Indiana. Taxpayer's income is not derived from entering into theoretical paper franchise agreements created, performed, and executed where the license agreements were signed. Taxpayer's income derives from and is directly linked to its decision to purposely avail itself of an Indiana business opportunity, a decision to recruit and license an unrelated franchisee to operate its trademark restaurants, and the decision by Indiana citizens to patronize those Indiana restaurants. Taxpayer's ability to derive income from its Indiana activities is made possible by the protections, benefits, and opportunities provided by the state of Indiana. Indiana has made it possible for taxpayer to enter into this state and to obtain income from its franchise agreements. Indiana, in turn, is entitled to tax that portion of taxpayer's income attributable to this state.

FINDING

Taxpayer's protest concerning the taxability of royalties received from its franchisee/licensee operating trademark restaurants in Indiana is denied.

II. Penalty-Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty on the entire assessment. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayer stated in its brief that there was no intent to defraud the state, and that its failure to pay the proper amount of tax was due to its interpretation of Indiana's statutes, regulations, and case law.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Taxpayer has not provided sufficient evidence to show that its interpretation of the relevant statutes and regulations is valid and reasonable. Therefore, given the totality of all the circumstances, waiver of the penalty on the entire assessment is inappropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

0220020260.LOF

LETTER OF FINDINGS: 02-0260
Indiana Corporate Income Tax
For the Years 1993 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer maintains that it is entitled to an abatement of the ten-percent negligence penalty imposed subsequent to an audit examination of taxpayer's 1993 through 1999 federal and state income tax returns.

STATEMENT OF FACTS

Taxpayer in its previous incarnation was in the business of leasing trucks, trailers, and other fleet vehicles. Following a corporate reorganization and a transfer of its physical assets to a related partnership entity, taxpayer is now – and at all times during the audit period – merely a passive participant in the partnership which holds these physical assets. Taxpayer is designated as the "general partner."

During 2001, the Department of Revenue (Department) conducted an audit review of taxpayer's 1993 through 1999 federal and state income tax returns. The Department determined – and taxpayer agreed – that taxpayer and the partnership did not have a unitary relationship. Accordingly, a number of adjustments were made to correctly reflect the partnership income received from the non-unitary partner. In addition, the ten-percent negligence penalty was imposed on the ground that taxpayer had consistently failed to report the partnership income properly.

The taxpayer disagreed with the imposition of the penalty and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. Ten-Percent Negligence Penalty.

Taxpayer requests that the Department exercise its discretion to abate the ten-percent negligence penalty. Taxpayer believes that the request is justified on several grounds. Taxpayer states that it experienced significant turnover of its in-house tax personnel and that its new employees did not understand taxpayer's relationship with the partnership. In addition, taxpayer was involved in a number of acquisitions that complicated the taxpayer's compliance objectives. Further, some of the tax returns submitted during the audit period were prepared by several outside tax service providers also unfamiliar with taxpayer's business operations. Taxpayer maintains that at all times it acted in good faith in preparing its tax returns.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Without minimizing the difficulties taxpayer experienced in dealing with and managing its own employees, without ignoring the difficulties involved in accurately communicating with multiple outside tax service providers, and without underestimating the apparently complex relationship between itself and the partnership interest, the Department is unable to agree that these are circumstances under which abatement of the negligence penalty is appropriate. Taxpayer – a sophisticated, substantial, and experienced business entity – failed to correctly report its partnership income over a period of at least six years. The Department does not agree that such results are indicative of "ordinary business care and prudence...." Id.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04-20020307.LOF

LETTER OF FINDINGS NUMBER: 02-0307
Gross Retail & Use Tax
For Years 1998, 1999, 2000

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail and Use Taxes—Business Assets

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-3-7; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4; *Tri-States Double Cola Bottling Company v. Department of State Revenue,* 706 N.E.2d 282 (Ind.Tax 1999)

Taxpayer protests the assessment of use tax on assets purchased for the business where allegedly no gross retail tax was paid at the point of purchase.

II. Penalty—Request for Waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the 10% negligence penalty and requests a waiver.

STATEMENT OF FACTS

Taxpayer is a Chinese restaurant offering buffet, menu, and carryout services. Ms. X is the owner and sole shareholder of the corporation. Ms. X engaged the services of a general contractor to renovate an existing building in order to open her business in November of 1998. The general contractor engaged the services of several different businesses to perform the work required. The audit determined that since gross retail tax had not been collected and remitted at the point of purchase of a number of items, taxpayer, owed use tax to the State of Indiana. Additional facts will be supplied as required.

I. Gross Retail and Use Tax—Business assets

DISCUSSION

Taxpayer protests the use tax assessment on assets purchased in order to open a Chinese restaurant where buffet, menu, and carryout services would be available to customers. Taxpayer entered into a contract with a general contractor who used subcontractors to provide materials and services to complete the refurbishing of the building in which the restaurant now resides. Invoices for these items were sent directly to taxpayer. Neither the general contractor nor subcontractors collected and remitted to the State of Indiana gross retail taxes on many items used in renovating the building space for the business. Taxpayer's owner must now pay use tax on these items, four of which are at issue in this protest: a sign purchased from a sign company not registered to collect Indiana gross retail and use tax in 1998; fixtures where the auditor agreed the freight charges were not subject to tax, but the actual purchases were; a carpet sold to taxpayer by a company that was already out of business at the time of the audit; a sound system installed by a Kentucky company (not registered in Indiana to collect and remit Indiana gross retail and use tax) which collected gross retail tax but remitted the amount to the state of Kentucky, not the state of Indiana. Taxpayer also protested an uncredited utility exemption for use of natural gas in food preparation; the audit made that adjustment, as well as the adjustment for the freight charges for the sign. These two adjustments still stand.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "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 assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-1 through 6-2.5-3-7, an "excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction." An exemption is provide in IC § 6-2.5-3-4 if "the property was acquired in a retail transaction and the state gross retail tax" was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a "person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;" therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

Taxpayer did not provide sufficient evidence that the State's gross retail tax was paid by her to the providers of the equipment at issue. The issue in this case is really whether such taxes were collected and remitted to the State of Indiana. If not, taxpayer remains liable for use tax on taxable items where no retail tax has been collected and remitted. See, *Tri-States Double Cola Bottling Co. v. Department of Revenue*, 706 N.E.2d 282, at 286-287.

FINDING

Taxpayer's protest concerning the assessment of use tax on assets purchased for the business, where it cannot be shown that gross retail tax was collected and remitted by authorized retail merchants at the time of purchase, is denied.

II. Penalty—Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty on the entire assessment. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayer stated at the hearing that she totally relied on the expertise of her CPA, and that her failure to pay the proper amount of tax was due to his advice and his interpretations of Indiana's statutes, regulations, and case law.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business

care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the penalty on the entire assessment is inappropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

0220020312.LOF

LETTER OF FINDINGS: 02-0312
Indiana Corporate Income Tax
For the Tax Years 1990 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Taxpayer's Qualifications to File Under Indiana's Financial Institution Tax: Conducting the Business of a Financial Institution.

Authority: IC 6-5.5 et seq.; IC 6-5.5-1-17(d)(1); IC 6-5.5-1-17(d)(2)(B); IC 6-5.5-3-1; IC 6-8.1-5-1(b); 45 IAC 17-2-1(a); 45 IAC 17-2-4(b), (c); 45 IAC 17-2-4(e)(2); IRS Rev. Rul. 55-540, § 162(4) 1955-2 CB 39; IRS Rev. Proc. 75-21, § 4, 1975-1 CB 715.

Taxpayer states that the Department erred in determining that taxpayer did not qualify to report its income as a Financial Institution and in determining that taxpayer should have been filing Indiana Corporation Income Tax Returns for 1990 through 1998.

II. Taxpayer's "Non-Filer" Status

Authority: IC 6-3-4-1; IC 6-8.1-1-1; IC 6-2.1-5-2; IC 6-8.1-5-2(a); IC 6-8.1-5-2(e); Germantown Trust Co. v. Commissioner of Internal Revenue, 309 U.S. 304 (1940); 45 IAC 15-3-2(d)(3); 45 IAC 15-5-7(f); Black's Law Dictionary (7th ed. 1999).

According to taxpayer, even if the Department is correct in determining that it should have been filing Indiana Corporation Income Tax Returns for 1990 through 1998, the Department is statutorily precluded from imposing additional corporate income tax for 1990 through 1997 on the ground that – having filed the FIT returns – taxpayer was a "filer." In addition, taxpayer argues that having accepted the 1990 through 1998 FIT returns, the Department is effectively estopped from belatedly deciding that it should have been paying corporate income tax during those years.

III. Lease Payments Subject to Gross Income Tax.

Authority: IC 6-2.1-2-2(a); Enterprise Leasing v. Indiana Dept. of Revenue, 779 N.E.2d 1284 (Ind. Tax Ct. 2002); Comdisco, Inc. v. Indiana Dept. of Revenue, No. 49T10-9903-TA-19, 2002 Ind. Tax LEXIS 93 (Ind. Tax Dec. 18, 2002); 45 IAC 1-1-10; 45 IAC 1-1-28; 45 IAC 1-1-49; 45 IAC 1-1-162; 45 IAC 1.1-1-3(6); 45 IAC 1.1-1-5; 45 IAC 1.1-1-22; 45 IAC 1.1-1-22(a)(4), (10); 45 IAC 1.1-2-10; 45 IAC 1.1-3-13; 45 IAC 1.1-3-13(b); 45 IAC 1.1-3-13(b)(1).

Taxpayer argues that money it received attributable to gas station lease payments was not subject to Gross Income Tax because the lease payments were not derived from Indiana sources.

IV. Including the Value of Leased Property in Taxpayer's Property Factor – Adjusted Gross Income Tax.

Authority: IC 6-3-2-1(b); IC 6-3-2-1(c); IC 6-3-2-1(l); Enterprise Leasing v. Indiana Dept. of Revenue, 779 N.E.2d 1284 (Ind. Tax Ct. 2002).

Taxpayer maintains that the audit, in calculating its adjusted gross income tax, erred by including in taxpayer's property factor the value of property leased in this state but not used by the taxpayer in this state.

V. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer argues that it is entitled to abatement of the ten-percent negligence penalty because its decision to file FIT returns was based upon instructions issued by and decisions made by the Department.

STATEMENT OF FACTS

Taxpayer began filing Indiana tax returns in 1985. In 1990, taxpayer filed an Indiana income tax return reporting and paying corporate income tax. Thereafter, taxpayer concluded that it should be filing Indiana Financial Institution Tax (FIT) returns. Having decided that this was the proper course, in 1992 taxpayer filed another 1990 return but this time filed a FIT return. In a letter

accompanying the 1990 FIT return, taxpayer stated it was "changing the 1990 filing status from IT-20s (on a separate basis) to FIT-20 on a unitary basis...." In that letter, taxpayer stated that it "[met] the FIT requirements." As a result of this substitute filing, the Department obligingly sent taxpayer a refund payment.

Taxpayer continued to file FIT returns for 1992 through 1999. Those returns were accepted by Department.

In 2001, the Department conducted an audit of taxpayer's business and tax records. In the report which followed that audit examination, the Department concluded that taxpayer "erroneously filed Financial Institution Franchise Tax Returns" for 1990 through 1999. Having arrived at the conclusion, the Department designated taxpayer as a "non-filer." The "non-filer" designation enabled the Department to go back to 1990, calculate Indiana corporate income taxes for those years, and assess back taxes for 1990 through 1999.

Taxpayer disagreed with the Department's conclusion on multiple grounds and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Taxpayer's Qualifications to File Under Indiana's Financial Institution Tax: Conducting the Business of a Financial Institution.

Taxpayer maintains that it was entitled – at all times relevant – to file FIT returns because taxpayer "derived at least 80 [percent] or more of its gross income (excluding extraordinary income) from making acquiring, selling or servicing loans or extensions of credit and leasing real and personal property that is the economic equivalent of the extension of credit." Taxpayer describes itself as a "multifaceted supplier of financial services to customers in a variety of industries."

According to taxpayer – for purposes of calculating its federal and FIT tax liability – taxpayer received lease payments attributable to an arrangement it had entered into with a trust (hereinafter, the "trust company") and an oil company affiliate. According to taxpayer, this is how the arrangement worked:

1. Oil company affiliate decided to build gas stations.
2. With an eye toward providing long-term financing for those gas stations, taxpayer supplied money to the trust company. Other third-party investors also provided money to the trust company. In actual practice, all of this money was held on a short-term basis by an indenture trust.
3. After oil company affiliate completed construction of the gas stations, it sold all the stations to the trust company. The oil company affiliate used the proceeds to pay off the initial cost of building the gas stations.
4. The oil company affiliate then leased the gas stations back from the trust company. Taxpayer describes this agreement – between the oil company affiliate and the trust company – as a "sales/leaseback."
5. Thereafter, the oil company affiliate made lease payments to the trust company for the right to use and operate the same gas stations it had originally designed, built, and briefly owned.

The issues raised all stem from the lease payments and the manner in which these payments should be treated for FIT and Indiana gross income tax purposes. According to taxpayer, the trust company was a "grantor trust," and – at least for federal income tax purposes – the trust company was entirely transparent; for federal income tax purposes, taxpayer treated the lease payments as if those payments were received directly from the oil company affiliate. For federal income tax purposes, taxpayer was entitled to claim the depreciation on the gas stations and pay no federal income tax on the lease payments. Accordingly, taxpayer argues that it was entitled to be treated as a "Financial Institution" for Indiana tax purposes. The audit disagreed, concluded that taxpayer was not entitled to be treated as a "Financial Institution," and that taxpayer should have been filing Indiana corporate income tax returns.

Indiana imposes a franchise tax, known as the Financial Institution Tax (FIT), on corporations transacting the business of a financial institution inside the state. IC 6-5.5 et seq. The tax is imposed on resident financial institutions, on nonresident financial institutions, and on non-bank entities that transact the business of a financial institution. 45 IAC 17-2-1(a). Non-resident corporations, such as the taxpayer, transacting the business of a financial institution, are included in the FIT when they meet one of the eight tests listed in IC 6-5.5-3-1 whereby the non-resident corporation demonstrates that it has established an economic presence in Indiana. It is not disputed that taxpayer established an "economic presence" within the state because the service stations were located in Indiana.

Because the taxpayer is not conducting the business of a traditionally regulated financial institution as defined in IC 6-5.5-1-17(d)(1), the taxpayer bases its claim to FIT status under the provisions of IC 6-5.5-1-17(d)(2)(B) which grants FIT status to those corporations which obtain 80 percent of their gross income from the "leasing [of] 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." Id.

That definition is amplified in the Department of Revenue regulations. A corporation is subject to the FIT if it is conducting the business of a financial institution. 45 IAC 17-2-4(b), (c). The benchmark for determining whether the taxpayer is conducting the business of a financial institution is if 80 percent of the corporation's gross income is derived from the economic equivalent of extending credit. Id. The corporation must not only derive 80 percent of its income from garnering interest, that interest must be derived from a lease that is "*not* treated as a lease for federal income tax purposes." 45 IAC 17-2-4(e)(2) (*Emphasis added*). Therefore, to satisfy the 80 percent benchmark, the interest must be both "the economic equivalent of the extension of credit" and

from a lease "*not* treated as a lease for the federal income tax purposes." Id.

The taxpayer, looking to qualify as a FIT filer, is required to demonstrate that the transactions from which it derives interest income are not true leases but financing leases. A financing lease appears on the surface to be a lease and may be labeled as such; however in reality it is simply a device which enables the lessor (seller) to retain a security interest in the property until the purchase price is paid by the lessee (buyer). In effect, under a financing lease, the lessor is making a conditional sale to the lessee. IRS Revenue Ruling 55-540 provides the guidelines used in determining the treatment of leases for use in the trade or business of the lessee. Whether a lease agreement is a lease, or in reality a conditional sale, depends on the provisions of the agreement in light of the facts and circumstances existing at the time the agreement was executed. Rev. Rul. 55-540, § 162(4) 1955-2 CB 39. In the "absence of compelling persuasive factors" demonstrating otherwise, a transaction is a conditional sales contract if one or more of the following factors are present:

(1). Portions of the periodic payments are specifically applicable to the equity to be acquired by the lessee;

(2) the lessee acquires title upon a payment of a stated amount of rentals which under the contract the lessee is required to make,

(3) the total amount paid by the lessee for a relatively short period of use constitutes an inordinately large proportion of the total payments required to secure transfer of title,

(4) the rental payments materially exceed the fair rental value,

(5) the property can be acquired under a purchase option at a price which is nominal in relation to the value of the property at the time the option may be exercised or which is a relatively small amount when compared to the total,

(6) some portion of the payments is specifically designated as interest or is otherwise recognizable as the equivalent of interest. Id.

IRS Revenue Procedure 75-21 expands on Revenue Ruling 55-540 by elaborating on the facts and circumstances that indicate whether a transaction is, in contrast to a conditional sale, a true lease. A transaction will constitute a true lease if *all* of the following conditions are met;

(1) The lessor must have a minimum unconditional risk investment in the property at the inception of the transaction,

(2) the lessor must maintain the minimum at risk investment throughout the lease and that risk must remain at the end of the lease,

(3) the minimum at risk investment must be equal to at least 20% of the cost of the property and must remain at 20% throughout the entire lease term,

(4) and, there must be a residual investment of at least 20% at the end of the lease term. Rev. Proc. 75-21, § 4, 1975-1 CB 715.

The taxpayer must meet its burden of proof by demonstrating that the proposed tax assessment, requiring the taxpayer to file under IT-20, is incorrect. IC 6-8.1-5-1(b) states in relevant part that "[t]he 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 person against whom the proposed assessment is made."

The money taxpayer receives from the oil company affiliate – by way of the trust company – is not money received from financing leases. Taxpayer is simply investing money in an entity which provides long-term financing for the construction of gas stations and then holds those gas stations in a sales/leaseback arrangement. Even if the trust company and the sub-trust were taken out of the picture and the Department was to treat taxpayer's income as if it was received directly from the oil company affiliate, the taxpayer would still not be entitled to FIT treatment because these gas station leases are not "conditional sales" of the service stations. There is no indication that any of the money oil company affiliate pays goes to purchasing equity in the station; there is no indication that the oil company affiliate will ever reacquire title to the service station simply by making a stated amount of rental payments. Even after considering or ignoring entirely the relationship and the obligations between all of the participants – the oil company affiliate, taxpayer, the trust company, and the sub-trust – taxpayer is not entitled to FIT status because none of the participants were engaged in "the economic equivalent of extending credit."

There is no indication that taxpayer's interest income is received from transactions which qualify as conditional sales under IRS Revenue Ruling 55-540 or that the income is not simply derived from true leases under Revenue Procedure 75-21. Taxpayer is not in the business of extending credit and may not submit a FIT return.

FINDING

Taxpayer's protest is respectfully denied.

II. Taxpayer's "Non-Filer" Status

Assuming that taxpayer was not entitled to submit FIT returns, taxpayer nonetheless argues that the Department may not assess corporate income taxes for 1990 through 1997 because the three-year statute of limitations has run for those eight years. The audit concluded that the three-year limitations period had not run because – having submitted the incorrect tax returns – taxpayer was a "non-filer;" submission of the incorrect returns did not begin the running of the limitations period.

A. Three-Limitations Period.

The limitations period is defined under IC 6-8.1-5-2(a) which states that, "Except as otherwise provided in this section, the

department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed...." IC 6-8.1-5-2(e) defines certain circumstances under which three-year limitations is tolled. "If a person files a fraudulent, unsigned, or substantially blank return, of if a person does not file a return, there is no time limit within which the department must issue its proposed assessment."

There is no contention taxpayer submitted fraudulent FIT returns. There is no contention taxpayer submitted unsigned or substantially blank returns. Instead, the audit based the assessment on the conclusion that taxpayer did "not file a return." If, as taxpayer contends, the submission of the FIT returns began running the three-year limitation under IC 6-8.1-5-2(a), taxpayer could only be assessed additional taxes for 1998 and 1999.

Taxpayer cites to Germantown Trust Co. v. Commissioner of Internal Revenue, 309 U.S. 304 (1940) in support of its argument, that the filing of the FIT-20 returns started the three-year limitations period. In Germantown Trust, the Court held that the two-year limitations period under Rev. Act. 1932, § 275(a), precluded the Internal Revenue Service from making a deficiency assessment against the petitioner. On behalf of its trust patrons, the petitioner had originally filed a "fiduciary return" but failed to file a corporate return reporting the petitioner's own income. Four years later, the IRS prepared a substitute corporate return and gave notice of the petitioner's tax deficiency. The IRS argued that the filing of the fiduciary return was the equivalent to "no return of the tax" under Rev. Act. 1932, § 275(c) which provided an extended four-year limitations period. The Court rejected the government's contention and agreed with the petitioner because petitioner's fiduciary return "contained all of the data from which a tax could be computed and assessed [even though] it did not purport to state any amount due as tax." Id at 307.

Taxpayer contends that its position is similar to that of the petitioner in Germantown Trust. Taxpayer states that the FIT returns submitted during 1990 through 1997 provided the Department with all the information that was needed for the Department to determine taxpayer should have been filing corporate income tax returns. Taxpayer concludes that because the Department had all the information it needed at the time of the original filings, it cannot at this late date assess the additional income taxes in the face of the three-year limitations period.

The Department must respectfully disagree with taxpayer's conclusion. Even assuming for the moment that the wayward FIT returns contained information sufficient to place the Department on notice that taxpayer should have been filing corporate income tax returns and imposed on the Department the obligation to inform taxpayer of its responsibilities under the Indiana tax laws, the three-year limitations period does not bar the Department from assessing the additional taxes here at issue. Indiana's regulation states that, "The running of the statute of limitations for purposes of assessing unpaid taxes will not start if the taxpayer fails to file a return which is required by any listed tax provision." 45 IAC 15-5-7(f). The term "listed tax" is defined at IC 6-8.1-1-1 which specifically includes "the gross income tax... the adjusted gross income tax... [and] the supplemental net income tax" as three of the state's "listed taxes." Taxpayer had an obligation to file returns and report the three "listed taxes." IC 6-3-4-1 states that, "Returns with respect to taxes imposed by this act *shall be made*...." (*Emphasis added*). *See also* IC 6-2.1-5-2. "Every taxpayer who receives more than one thousand dollars ($1,000) in gross income during a particular taxable year *shall file* with the department an annual gross income tax return." (*Emphasis added*).

Taxpayer does not stand in same shoes as that of the petitioner in Germantown Trust. In that case, the Court was interpreting the applicability of the limitations period set out in Rev. Act. 1932, § 275(a). In this instance, taxpayer incorrectly determined it was entitled to submit FIT returns. However, the submission of the FIT returns did not begin the running of the three-year limitations period because, under 45 IAC 15-5-7(f), taxpayer had an obligation to file corporate income tax returns. For purposes of determining its responsibility under the Indiana corporate tax laws, taxpayer was a "non-filer."

B. Equitable Estoppel.

Taxpayer argues that even if the three-year limitations period was not tolled by the submission of the FIT returns, the Department is nonetheless precluded from assessing the additional taxes because it acquiesced to the taxpayer's 1992 decision and because the Department may not change its position without first having given taxpayer notice of that decision.

Taxpayer points out that it notified the Department of its decision to file FIT returns in 1992, and that the Department "affirmatively approved the filing change by granting [taxpayer] a refund of the income tax paid." In addition, taxpayer points out that the Department's instructions on the corporate income tax returns and the FIT returns specifically instruct the filer to submit either an IT-20 return or an FIT-20 return but that the filer should not submit both. Taxpayer concludes that, "In short, the Department agreed with [taxpayer's] position that it should file financial institutions tax returns."

Essentially, taxpayer argues that it relied on the Department's past acquiescence to the decision to submit FIT returns and that the Department is now estopped from belatedly changing that position. Taxpayer is interposing the defense of "equitable estoppel." Equitable estoppel is a defensive doctrine which "prevents one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way...." Black's Law Dictionary 571 (7th ed. 1999).

The taxpayer's argument is unwarranted because there is no indication taxpayer sought or received advice from the Department concerning its filing status. There is no indication the Department "agreed" that the taxpayer was entitled to file the FIT returns. There is no indication the Department induced taxpayer into incorrectly believing it was entitled to submit FIT returns. There is no

indication that the Department is taking unfair advantage of the taxpayer after having affirmatively misled taxpayer as to its tax liability. Under 45 IAC 15-3-2(d)(3), taxpayer was entitled to seek, obtain, and rely on a ruling from the Department as to its tax status. Taxpayer chose not to do so but made an erroneous decision to submit FIT returns and unilaterally inform the Department that it "[met] the FIT requirements." During the years at issue, taxpayer enjoyed the advantage of owing zero Indiana tax liability. However belatedly, taxpayer must now live with the consequences of that decision.

FINDING

Taxpayer's protest is respectfully denied.

III. Lease Payments Subject to Gross Income Tax.

Taxpayer argues that it did not incur gross income tax liability during the years covered by the audit report. Taxpayer bases this argument on the fact that the audit assessed gross income tax on the rental income taxpayer received from the gas stations located in Indiana. However, taxpayer points out that it did not own the Indiana gas stations but that the trust company owned the gas stations. Taxpayer further states that it did not receive the lease payments but that the trust company received the payments.

Taxpayer sets out a secondary argument. Even if the lease payments were subject to gross income tax, taxpayer concludes that it can only be liable for gross income tax "on an apportioned share of the trust's distributable net income, which during the years 1990 – 1996 was a negative number – *i.e.* a loss."

A. Trust Income.

Taxpayer's wholesale conclusion that trusts are not subject to the state's gross income tax is not well taken.

45 IAC 1-1-162 provides as follows:

Business Trusts. Generally, trusts are not taxpayers under the Gross Income Tax. However, if a trust resembles a corporation in form and has its purpose the conduct of a business, it is considered an association and is taxed as a corporation. A trust with these features is taxable as a corporation:

(1) The trustee(s) exert centralized management over the trust property;

(2) Ownership in the trust is transferable;

(3) The owners' liability is limited to the trust property; or

(4) The trust has perpetual life.

45 IAC 1-1-162 is applicable to the trust company's 1990 through 1998 income but was replaced by 45 IAC 1.1-1-22 which states that for purpose of the state's gross income tax, "taxpayer" includes both "[a] business trust as defined in IC 23-5-1-2." and "[a] fund, account, or trust treated as a corporation under Section 468B of the Internal Revenue Code or its accompanying regulations." 45 IAC 1.1-1-22(a)(4), (10).

45 IAC 1.1-1-22 is relevant to the income received by the trust company during 1999.

Under either the previous or the more current gross income tax regulatory regime, the income received by certain trust arrangements is subject to Indiana gross income tax. The Department must disagree with taxpayer's conclusion that a trust cannot be a "taxpayer" for gross income tax purposes.

B. Distributable Net Income.

Taxpayer argues that even it is subject to gross income tax, it is only subject a tax on the "distributable net income" received from the trust company. Because – according to taxpayer's calculation – the amount of "distributable net income" was a negative number, taxpayer owes no gross income tax.

As the basis for this conclusion, taxpayer cites to 45 IAC 1.1-3-13 which states in part:

Each corporate beneficiary of the trust shall report for gross income tax purposes its proportionate share of the following income:

(1) Distributable net income determined under section 643 of the Internal Revenue Code.

(2) An accumulation distribution determined under Section 665 of the Internal Revenue Code.

(3) Undistributed capital gain, determined without regard to capital losses, not otherwise included in the distributable net income as determined under Section 665 of the Internal Revenue Code. This amount shall be determined before any taxes imposed on the trust attributable to such income. 45 IAC 1.1-3-13(b).

Taxpayer relies exclusively on the "distributable net income" language found under 45 IAC 1.1-3-13(b)(1). However, it is apparent that the regulation did not intend the cited language to be exclusive. Rather the regulation – under certain circumstances – brings both "an accumulation distribution" and "undistributed capital gain" within the purview of the gross income tax.

In addition, the cited regulation applies only to the income taxpayer received from the trust company during 1999. The taxpayer has not fully developed its "distributable net income" argument regarding the 1990 through 1998 assessments.

The Department is unable to agree with taxpayer's conclusion that it was subject to gross income tax only on the distributable net income tax received from the trust company during 1990 through 1999.

C. Indiana Source Income.

Taxpayer argues that the money it received – attributable to lease payments for Indiana gas stations – was not Indiana source income for gross income tax purposes.

In support, taxpayer cites to Enterprise Leasing v. Indiana Dept. of Revenue, 779 N.E.2d 1284 (Ind. Tax Ct. 2002). In that case, the Tax Court found that an out-of-state company did not receive Indiana source income when it rented Indiana-titled cars to its customers; therefore, the rental income was "not subject to Indiana's gross income tax." Id. at 1292.

In addition, taxpayer cites to Comdisco, Inc. v. Indiana Dept. of Revenue, No. 49T10-9903-TA-19, 2002 Ind. Tax LEXIS 93 (Ind. Tax Dec. 18, 2002), in which the court found that income received from leasing "high technology and medical equipment" to customers within Indiana was not subject to gross income tax. Id. at *5.

IC 6-2.1-2-2(a) imposes the gross income on the receipt of "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or domiciliary or Indiana." However, the Tax Court has found that certain rental income received from Indiana customers is not Indiana source income for gross income tax purposes.

In Enterprise, the court found that that money received from renting Indiana titled cars was not Indiana source income because it was not the petitioners who decided to register and operate the cars within the state. Enterprise 779 N.E.2d at 1291. Rather, it was the decision of the individual customers to register and operate the cars in Indiana. Id. The petitioners' activities in sending the cars to its customers "did not rise to the level of 'active participation' in the 'ownership, leasing' or rental' of property in Indiana." Id. The court determined that the "critical transaction" occurred related to the leasing of the cars occurred at the petitioners' out-of-state location. Id. at 1230.

Similarly, in Comdisco the court found that the petitioners' only Indiana activity was "ownership of high technology equipment that [was] located pursuant to the lessees' direction." Comdisco, 2002 Ind. Tax LEXIS 93 at *22.

The Department does not find that the decisions in Comdisco and Enterprise are dispositive of the question of whether lease payments received from gas stations located within Indiana are subject to gross income tax. In both those cases, the fact that the tangible personal property happened to be located within Indiana was unrelated to the "critical transaction" which formed the basis for the petitioners' income. In taxpayer's situation, the lease payments are derived from real property located within this state. The connection between Indiana and the leased gas stations is inherent in the nature of real property and is not simply the result of sheer happenstance or the lessees' unilateral decisions to locate the gas station within Indiana. The connection between the Indiana gas stations and the lease payments cannot be avoided by the fact that the lease agreements were executed at an out-of-state location or that the lease payments were directed to an out-of-state location.

Taxpayer's argument to the contrary, the analysis seems fairly straightforward. 45 IAC 1-1-49 states that, "[A] taxpayer may establish a 'business situs' in ways including, but not limited to, the following: (6) Ownership, leasing, rental or other operation of income producing (real or personal)." *See* 45 IAC 1.1-1-3(6). Taxpayer receives lease income attributable to gas stations located within Indiana. 45 IAC 1-1-28 provides that the income derived from "the lease or rental or real or tangible personal property, whether actually or constructively received are taxable at the high rate...." *See* 45 IAC 1.1-2-10. Income which is "constructively received" includes "items of gross income which are not actually received by the taxpayer but which are credited to him, available for his benefit, or represent income to which he is entitled." 45 IAC 1-1-10; *See* 45 IAC 1.1-1-5.

By means of its arrangement with the trust company and the oil company, taxpayer received income attributable to the leasing of gas stations located within Indiana. The Department disagrees with taxpayer's conclusion that it did not receive Indiana source income and that the income is not subject to the state's gross income tax.

FINDING

Taxpayer's protest is denied.

IV. Including the Value of Leased Property in Taxpayer's Property Factor – Adjusted Gross Income Tax.

Taxpayer argues that the audit review miscalculated its adjusted gross income tax liability by including the value of the leased gas station in its property factor.

Indiana imposes the adjusted gross income tax on each corporation's adjusted gross income derived from sources within this state. IC 6-3-2-1(b). Where a corporation – such as taxpayer – receives income from both Indiana and out-of-state sources, the amount of tax is determined by the apportionment formula set out in IC 6-3-2-1(b). That formula operates by multiplying taxpayer's total business income by a fraction composed of a property factor, a payroll factor, and a sales factor. IC 6-3-2-1(b). In this instance, taxpayer argues that the gas station properties should not have been included in the property factor.

The property factor is a fraction, "the numerator of which is the average value of the taxpayer's real and tangible personal property owned and rented and used in this state during the taxable year...." IC 6-3-2-1(c). Under taxpayer's calculation, reducing the property factor numerator to "zero" would have the effect of reducing taxpayer's adjusted gross income tax liability to "zero." Taxpayer argues that it did not "use" the Indiana gas stations and points to the Tax Court's decision in Enterprise 779 N.E.2d at 1294 to support its argument that the gas stations should be excluded from the property factor numerator.

Setting aside the question of whether the Enterprise decision – dealing with the issue of whether the value of rental cars should be included in the property factor numerator – is relevant to the real property at issue here, the Department concludes the audit was correct in apportioning taxpayer's income based, in part, on the value of the leased gas stations. Clearly, taxpayer received income attributable to the Indiana gas station locations. Taxpayer's contention that these gas station properties should be eliminated from the apportionment factors would have the effect of eliminating taxpayer's Indiana income tax liability on the ground that it did not

"use" these properties. The Department finds little support for such a result in fact, law, or common sense.

IC 6-3-2-2(l) provides as follows:

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, if reasonable... (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana...." (*Emphasis added*).

The Department does not agree with the notion that disregarding entirely the value of the gas station properties would "fairly represent the taxpayer's income." The audit's decision to include the value of Indiana properties was entirely appropriate in order to "fairly represent the taxpayer's income derived from sources with the state of Indiana...." Id.

FINDING

Taxpayer's protest is respectfully denied.

V. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer maintains that the ten-percent negligence penalty should be abated because based upon "instructions issued by the Department, the actions of the Department and the relevant facts" its tax reporting was not negligent.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Although unwilling to agree that the taxpayer's tax reporting errors were the result of actions or instructions attributable to the Indiana Department of Revenue, the Department agrees with taxpayer that the positions it took in regard to its Indiana tax liabilities – however erroneous – were indicative of "reasonable cause and not due to willful neglect."

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

4320020336.LOF

LETTER OF FINDINGS NUMBER: 02-0336
Underground Storage Tank Fee
For the Years 1991-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Underground Storage Tank Fee-Imposition

Authority: IC 13-23-12-1, IC 13-12-12-4, IC 6-8.1-1-1, IC 6-8.1-5-1 (b).

The taxpayer protests the imposition of the underground storage tank fees.

II. Tax Administration-Statute of Limitations

Authority: IC 6-8.1-5-2(a), IC 6-8.1-5-2(e).

The taxpayer contends that certain assessments are barred by the Statute of Limitations.

III. Tax Administration-Penalties

Authority: IC 13-23-12-7(a), IC 8.1-5-2(a), 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of penalties.

STATEMENT OF FACTS

The taxpayer is an out-of-state corporation with underground storage tanks at facilities in Indiana. After a review of the taxpayer's payment of underground storage tank fees, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional underground storage tank fees, interest, and penalty. The taxpayer protested the imposition of the fees, interest, and penalty. A hearing was held and this Letter of Findings results.

I. Underground Storage Tank Fee-Imposition

DISCUSSION

IC 13-23-12-1 imposes a fee on underground storage tanks that have not been closed before July 1 of any year. Although the Indiana Department of Environmental Management, hereinafter referred to as IDEM, administers the state regulation of underground storage tanks, IC 13-12-12-4 mandates that the department collect and deposit the underground storage tank fees. IC 6-8.1-1-1 defines "listed tax" to include "any other tax or fee that the department is required to collect or administer." Since the department pursuant to statute must collect the underground storage tank fees, these fees constitute listed taxes. All of the laws and regulations concerning the department's collection of listed taxes apply to the department's collection of the underground storage tank fees. 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 argued that several of the underground storage tanks were closed during the time period of the assessment. Pursuant to the imposition statute, there is no fee unless there is an operational underground storage tank. The taxpayer presented substantial evidence that several underground storage tanks were closed. Therefore, the taxpayer would not owe the fees assessed after the closure of the underground storage tanks. The specific tanks and the dates of closure follow.

Facility Number	Date of Closure
009482	8/12/1999
002111	12/20/1999
002107	8/12/1999
00406	8/16/1999
10945	4/04/2000
24040	8/08/1999
24041	8/19/1999

The taxpayer also argues that during the assessment period, it did not own, lease, or operate underground storage tanks at facility numbers 24042, 002110, and 002109. The taxpayer did not provide documentation adequate to sustain its burden of proving that it did not own, operate, or lease underground storage tanks at facility numbers 002110 and 002109. The taxpayer did provide documentation adequate to sustain its burden of proving that it did not own, operate, or lease underground storage tanks at facility number 24042.

FINDING

The taxpayer's protest to underground storage tank fees assessed on underground storage tanks after their closing is sustained. The taxpayer's protest to the underground storage fees assessed on facility 24042 is sustained. The taxpayer's other protests are denied.

II. Tax Administration-Statute of Limitations

DISCUSSION

IC 6-8.1-5-2(a) limits the time in which the department may issue a proposed assessment as follows:

Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or any of the following:

(1) the due date of the return;...

The taxpayer argues that the department violated the Statute of Limitations by levying the proposed assessments more than three (3) years after the due dates of the returns. The department agrees that it waited more than three years from the due dates of the returns to file many of the assessments. The department's delay in the issuance of the assessments is not, however, a fatal error in this situation pursuant to the provisions of IC 6-8.1-5-2(e) as follows:

If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment.

In this case, the taxpayer did not file a return for any of the individual proposed assessments protested in this cause. The taxpayer argues that it did file some returns and that should start the statute running on every underground storage tank fee. The taxpayer errs in this conclusion. The taxable event at issue is the annual fee due for each underground storage tank. Returns must be filed and taxes paid for each taxable event. Any return filed and fee paid merely starts the running of the Statute of Limitations on future proposed assessments by the department relating to that particular taxable event. None of the department's proposed assessments are for taxable events for which the taxpayer filed a return or paid the fee. Therefore, the Statute of Limitations does not bar these assessments.

FINDING

The taxpayer's protest is denied.

III. Tax Administration-Penalties

DISCUSSION

Two types of penalties were imposed in this case. The taxpayer protests both impositions of penalty. The first is an IDEM

penalty in the amount of six thousand dollars ($6,000) imposed pursuant to IC 13-23-12-7(a) as follows:

An owner of an underground storage tank who:

(1) is required to pay the fee under section 1 of this chapter; and

(2) fails to pay the fee when due as established under section 2 of this chapter; shall be assessed a penalty of not more than two thousand dollars ($2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid.

IDEM is granted great discretion in determining whether this penalty applies in any situation and how much the penalty should be. The taxpayer did not provide any documentation indicating that IDEM abused its discretion in the imposition of this penalty. Therefore, the imposition of the IDEM penalty is appropriate in this matter.

The taxpayer also protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The filing of some returns and payment of some underground storage tank fees indicates that the taxpayer was aware of its duty to file returns and pay the fees. Through its inattention to the duties imposed upon it by the Indiana Code, the taxpayer repeatedly breached this duty. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest to the imposition of the penalties is denied.

DEPARTMENT OF STATE REVENUE

0420020339.LOF

LETTER OF FINDINGS NUMBER: 02-0339
Sales and Use Tax
For the Years 1998-1999

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. Sales and Use Tax-Accommodation Sales

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-4-4(a), *Park 100 Development v. Indiana Department of State Revenue*, 429 N.E.2d 220, (Ind. 1981).

STATEMENT OF FACTS

The taxpayer is an Indiana corporation which provides specialized, technical computer training services. In some instances, the taxpayer provides the facility but not the trainer. In those instances, the clients provide their own trainer. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use taxes. The taxpayer protested the imposition of sales tax on the fees paid for use of the facilities when the taxpayer did not provide the trainer. A hearing was held on this issue.

I. Sales and Use Tax-Accommodation Sales

DISCUSSION

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). Indiana imposes an excise tax, the sales tax, on sales of tangible personal property by retail merchants in retail transactions. Purchasers are liable for the sales tax that the retail merchants collect and remit to the state. IC 6-2.5-2-1. There is no sales tax imposed on services unless the law specifically defines the provision of a particular service as a retail transaction subject to the sales tax. It is well established that laws imposing a tax are strictly construed against the department unless an exemption statute is being interpreted. *Park 100 Development v. Indiana Department of State Revenue*, 429 N.E.2d 220, (Ind. 1981).

In the taxpayer's situation, the department found that the taxpayer's provision of training services in its facilities were the provision of services not subject to the sales tax. The department imposed the sales tax on the taxpayer's sales to clients who provided their own instructors. The department based its assessment on the definition of leasing accommodations as a retail

transaction subject to sales tax at IC 6-2.5-4-4(a) as follows:

> A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person: (1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and (2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

The taxpayer contends that even when it does not provide the instructor, it is actually providing a service and selling its technical computer knowledge rather than leasing an accommodation subject to sales tax. The taxpayer bases this contention on the comparison of its agreement with its clients to leases at typical conference centers in the same geographic area. The taxpayer's rates for a day are significantly above those documented in the file at other area conference centers. The taxpayer contends that these higher rates reflect that the contract is actually for the provision of services and sale of its computer knowledge at the taxpayer's location rather than the lease of a meeting facility.

The taxpayer's argument is unpersuasive. Although their higher rates reflect the greater services involved in the set up of the equipment provided with the rental accommodation, this is a quantitative difference. It does not change the basic character of the contract from the rental of a room with equipment ready to operate.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20020433.LOF

LETTER OF FINDINGS NUMBER: 02-0433
SALES AND USE TAX
For Years 1999 and 2000

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales & Use Tax – Public transportation exemption

Authority: IC 6-2.5-5-27; *Panhandle Eastern Pipeline Co. v. Indiana Dept. of State Revenue*, 741 N.E.2d 816 (Ind. Tax Ct. 2001); *Indiana Waste Systems of Indiana, Inc. v. Indiana Dept. of State Revenue*, 644 N.E.2d 960 (Ind. Tax Ct. 1994).

Taxpayer protests the imposition of gross retail tax on purchases made that, in the opinion of taxpayer, fall under the public transportation exemption.

STATEMENT OF FACTS

Taxpayer is in the grain-handling business. Its activities include, but are not limited to, the drying, storing, and hauling of grain. Taxpayer is also engaged in the purchase and resale of grain, lime, rock, chemicals, and fertilizer. A significant portion of taxpayer's revenue is derived from the transportation of tomatoes for a third party.

DISCUSSION

I. Sales & Use Tax – Public transportation exemption

Taxpayer believes that the transactions in question are exempt from state gross retail tax under IC 6-2.5-5-27. This statute provides that transactions involving 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. IC 6-2.5-5-27. Taxpayer is attempting to apply this statute to transactions that concerned its truck hauling activities.

In *Panhandle Eastern Pipeline Co. v. Indiana Dept. of State Revenue*, 741 N.E.2d 816 (Ind. Tax Ct. 2001), the court set out what the Department extrapolates to be a two-pronged test to determine if a particular business qualifies for the public transportation exemption. The language used by the court in *Panhandle* reads as follows:

> 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.

The two-pronged test the Department extrapolates is as follows:

1. The taxpayer must be predominately engaged in public transportation of the property of another; and
2. The taxpayer's property must be predominately used for providing public transportation.

The Department conceded that taxpayer meets the second prong of the test; the equipment at issue is predominately used for the provision of public transportation. This protest concerns the first prong of the test; namely whether or not taxpayer is *predominately engaged* in public transportation of another (emphasis added). *Panhandle* stands for the notion that the taxpayer is either entitled to a complete exemption from taxation or no exemption at all – there are no partial exemptions.

In this instance, the key analysis to be undertaken then is, at what point does a taxpayer's business become predominately engaged in public transportation? The Department and the taxpayer give very different yet plausible measuring sticks that reach different results.

The Department contends the benchmark should be the taxpayer's gross income. In the tax years in question, taxpayer's gross income from the transportation of the property of another as compared to its total revenues from all activities was 24% and 21% respectively.

On the other hand, taxpayer contends the true measure of its business is "transportation miles traveled." This factor looks solely at the number of miles that the trucks were used for hauling and takes the miles traveled for the benefit of another and compares it with total miles hauled. In 1999 and 2000, those ratios were 82% and 72% respectively.

The figures from which these ratios are derived, in both situations, are uncontested. It is also uncontested that if the Department's analysis is accepted, the taxpayer is not exempt; whereas if the taxpayer's analysis is accepted, it would be exempt.

The Court in *Panhandle* doesn't give any clear guidance as to what factors should be considered when determining if a taxpayer's business is predominately engaged in public transportation. As it is, the potential factors are virtually limitless.

The Department's position rests upon an analysis of the taxpayer's hauling business for others as a function of its overall business activities (e.g. the selling of grain produces revenues that, though unrelated to the process of hauling, are factored into the analysis). Alternatively, taxpayer's position rests upon an analysis of the taxpayer's hauling business for others as a function of its overall hauling business, absent any consideration of its other business activities (i.e. any revenues from activities such as the selling of grain are completely ignored).

The statute in question (IC 6-2.5-5-27) makes no reference to the business of the taxpayer as a whole. An argument could be made, however, that the first prong of the *Panhandle* test requires such an analysis. In *Indiana Waste Systems of Indiana, Inc. v. Indiana Dept. of State Revenue*, 644 N.E.2d 960 (Ind. Tax Ct. 1994), the court found against the taxpayer because its public transportation revenue equaled 17.7% or less of its gross revenue on a yearly basis:

> Waste Management's maximum annual revenue from public transportation was 17.7 percent of its total revenue, and therefore, the remaining 80 plus percent of its revenue came from non-public transportation.

In finding that the taxpayer was not entitled to the public transportation exemption, the court analyzed the business of a taxpayer that was exclusively in the transportation business. The case turned on whether or not the equipment was "predominately used" in public or non-public transportation. And while that issue is not contested here, the analysis is still relevant for determining whether or not a taxpayer is "predominately engaged" in the transportation of property of another.

Taxpayer's "miles traveled" position serves taxpayer well in satisfying the second (predominately used) prong of the public transportation test. Through it, taxpayer has demonstrated that when its trucks are used to haul property, about three times out of four it does so with a third party's property. This shows that taxpayer's equipment is "predominately used" in public transportation. But the Department is in agreement on this issue, and it does nothing to show that taxpayer is "predominately engaged" in the business of public transportation.

The plain language of *Panhandle* is that the taxpayer must be predominately engaged in the transportation of the property of another. For one to be predominately engaged in something implies a look at the big picture – are the majority of taxpayer's activities considered public transportation? The answer, in this instance, is no.

During the tax years in question, taxpayer never reported more than 24% of its income from activities deemed to be public transportation. The majority of its income – the bulk of the remaining 76% - comes from the selling of grain and other related activities. Therefore, taxpayer is more appropriately classified as being predominately engaged in grain sales, not public transportation, and therefore taxpayer fails the first prong of the test.

FINDINGS

The taxpayer is respectfully denied.

DEPARTMENT OF STATE REVENUE

04-20020508.LOF

LETTER OF FINDINGS NUMBER: 02-0508
SALES/USE TAX
For Years 1999 and 2000

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date

of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Use Tax – Definition of a contractor

Authority: 45 IAC 2.2-3-7(a)

Taxpayer protests it being defined as a contractor as stated in the statutes.

II. Use Tax – Violative of the Constitution

Authority: None cited

Taxpayer asserts that the disparate treatment of tools and machinery as determined according to the location where the project is undertaken violates the Constitution.

III. Use Tax – Imposition of the use tax on the purchase of items used in the digging of wells

Authority: § 6-2.5-3-2; 45 IAC 2.2-3-12(c)

Taxpayer asserts that, because its customers are exempt from gross retail tax, it should share in that exempt status.

IV. Use Tax – Disparity of treatment of oil and water extraction

Authority: § 6-2.5-4-5

Taxpayer claims that those taxpayers in the business of extracting water are treated differently from those taxpayers that extract oil.

STATEMENT OF FACTS

Taxpayer is in the business of drilling water wells and installing pumps and plumbing for residences, farms, and commercial entities in order to provide water for livestock and human consumption. It also repairs and replaces equipment that is used to extract water from the ground. Taxpayer performs lump sum contracts and time and material contracts.

DISCUSSION

I. Use Tax – Definition of a contractor

In both its written appeal and at the hearing, taxpayer denies that it fits the definition of a contractor as defined in the statutes without any explanation as to why the definition fails.

45 IAC 2.2-3-7(a) gives a definition of a contractor for use in the sales and use tax scheme. It states:

> (a) **Contractors**. For purposes of this regulation [45 IAC 2.2] "contractor" means any person engaged in converting construction material into realty. The term "contractor" refers to general or prime contractors, subcontractors, and specialty contractors, *including but not limited to* persons engaged in building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction. (Emphasis added).

Presumably, taxpayer's argument is that because well digging is not one of the enumerated examples of activities within the purview of what constitutes a "contractor," it ipso facto must not be one. Such is not the case, however, as the italicized wording of the statute indicates that the list is not all-inclusive.

Activities such as carpentry, roofing, electrical work, and especially plumbing and excavating, all point to the same overall goal – the production of a finished product of a structure attached to real property that is suitable to its inhabitant. Well digging would very much lend itself to being included in that list, as the digging of a well leads to the habitability of the structure. Therefore, the digging of wells is within the activities contemplated by the language "including but not limited to."

Also, taxpayer is engaged in the well-digging business. Its products and services are used by its customers to extract water from the ground. The wells become a part of the real property of the customer, be it a residence, farm, commercial building, etc. Therefore, through its conversion of water-extracting products along with services that ultimately bring water to its customers, taxpayer is converting construction material into realty. Taxpayer presents no evidence to refute this notion.

Taxpayer also points to the fact that its customers are involved in the process of "extracting" water from the earth. Extracting is also absent from the list of enumerated activities in the statutory definition of a contractor. In this case, it is unnecessary to decide whether or not the process of extracting is contemplated by the "including but not limited to" language, because the argument is invalid on its face. Taxpayer may not make use of its customers arguments in this situation. It is taxpayer's customers that undertake the extraction of water from the ground, not the taxpayer itself. Therefore, taxpayer may not make use of this argument.

FINDINGS

The taxpayer is respectfully denied.

II. Use Tax – Violative of the Constitution

DISCUSSION

The taxpayer apparently believes that the sales and use tax statutes are violative of the Constitution. Taxpayer doesn't state which statutes in particular are unconstitutional, nor does it name a particular clause of the Constitution that is being violated. Therefore, given the paucity of taxpayer's argument, the presumption of constitutionality afforded state statutes, and the fact that an administrative hearing in the Indiana Department of Revenue is not the proper forum to challenge the constitutionality of tax

statutes, the Department must decline to address this issue.

FINDINGS

The taxpayer is respectfully denied.

III. Use Tax – Imposition of the use tax on the purchase of items used in the digging of wells

DISCUSSION

A use tax is assessed under § 6-2.5-3-2, which reads:

(a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Taxpayer purchased tools, equipment, repair parts, fuel, etc., that were used during construction and for which taxpayer neither paid Indiana gross retail tax nor remitted use tax to the Department. Taxpayer claims that, because its customers are exempt, it too should be exempt from use tax.

The Department need not reach a conclusion concerning the validity of the claim that taxpayer's customers are exempt from use tax, regardless of the theory that taxpayer espouses. The fact is that 45 IAC 2.2-3-12(c) already speaks to the issue:

Utilities, machinery, tools, forms, supplies, equipment, or any other items used or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed.

The outcome is clear. Taxpayer may not make use of its customers' exemptions under these circumstances.

FINDINGS

The taxpayer is respectfully denied.

IV. Use Tax – Disparity of treatment of oil and water extraction

Taxpayer believes that those companies engaged in the business of water extraction are unfairly treated from those companies engaged in the business of oil extraction. Taxpayer cites to no specific deferential treatment upon which to base its claim.

The only statute that appears on point is § 6-2.5-4-5, which defines the term "power subsidiary." These statutes would seemingly only apply to the transaction between the taxpayer and its customers – transactions that are not at issue under the circumstances. The transactions at issue here are the purchases of equipment by the taxpayer from retail merchants. The taxpayer's customers don't enter the equation.

Finally, because such a disparate treatment argument lends itself to a Constitutional analysis, an administrative hearing is an inappropriate forum to entertain such arguments, as was mentioned in Issue II above.

FINDINGS

The taxpayer is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220020510.LOF

LETTER OF FINDINGS: 02-0510
Indiana Corporate Income Tax
For the Tax 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sale of Inventory Held in Consignment – Gross Income Tax.

Authority: IC 6-2.1-1-13; IC 6-2.1-2-2; IC 6-2.1-3-3; Reynolds Metals Co. v. Indiana Dept. of State Revenue, 433 N.E.2d 1 (Ind. App. 1982); 45 IAC 1.1-1-3(a).

Taxpayer argues that the income received from the sales of inventory held on consignment within Indiana was not subject to gross income tax.

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).

Taxpayer maintains that the Department of Revenue (Department) should exercise its discretion and abate the ten-percent negligence penalty assessed at the time of the audit examination.

STATEMENT OF FACTS

Taxpayer is an Illinois based company in the business of manufacturing and selling telephone equipment. Taxpayer maintains

an inventory of equipment at two of its Indiana customers' locations. Taxpayer also has an Indiana based employee who deals with its Indiana customers. The Department conducted an audit of taxpayer's federal and state income tax returns. The audit review resulted in a number of adjustments. The taxpayer disagreed with one of the gross income tax adjustments and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer challenged the basis for the gross income tax adjustment. This Letter of Findings results.

DISCUSSION

I. Sale of Inventory Held in Consignment – Gross Income Tax.

Taxpayer sells its telephone equipment to various Indiana customers. In order to facilitate sales to two of its major Indiana customers, taxpayer maintains an inventory of equipment at the location of the two Indiana customers. Taxpayer ships its equipment to the customers and retains ownership of the equipment until the customers have need of that equipment. The inventory arrangement has both a formal, contractual component and is also based upon long-standing extra-contractual understandings with the two major customers.

The taxpayer and the two customers agree in advance on what items should be maintained in inventory. The two customers are able to remove equipment from inventory on an "as-needed" basis. The customers do not need to obtain permission from the taxpayer before removing equipment from inventory. With the first of these customers, taxpayer makes a monthly reconciliation of the equipment held in inventory. Thereafter, taxpayer bills that particular customer for the amount of equipment used. With the second Indiana customer, transfers of equipment are electronically recorded and reconciled. Billing occurs on a continuing basis with the second customer.

Although taxpayer retains ownership of the equipment until removed from inventory, the two Indiana customers bear the risk of loss while the equipment is stored at the taxpayers' warehouses.

By contract, the customers are required to eventually purchase all of the equipment placed into inventory at the customers' locations. In practice and in order to maintain a good customer relationship, equipment which is not eventually acquired and used by the customers, is returned to taxpayer.

The audit determined that taxpayer should have been paying gross income tax on the money earned from the in-state inventory sales. Taxpayer disagrees arguing that these are interstate Illinois-to-Indiana sales, that the sales are conducted in interstate commerce, and the income is exempt from Indiana gross income tax.

Under IC 6-2.1-2-2, Indiana imposes "[a]n income tax, known as the gross income tax... 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 or a domiciliary of Indiana." A taxpayer's gross income includes all gross income not specifically exempted. IC 6-2.1-1-13.

In addition to the specific exemptions allowed within the gross income tax scheme, IC 6-2.1-3-3 codifies the constitutional limits placed upon the individual states by the Interstate Commerce Clause. U.S. Const. art. I, § 8. Specifically, IC 6-2.1-3-3 provides, "Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing the gross income by the Unites States Constitution."

In support of its argument that the income is exempt, taxpayer relies on Reynolds Metals Co. v. Indiana Dept. of State Revenue, 433 N.E.2d 1 (Ind. App. 1982). In that case, the court found that the income Virginia-based Reynolds received from consignment sales was not subject to Indiana gross income tax. Id. at 18. Specifically, taxpayer points to the court's statement that, "The mere maintenance of a security interest in goods located within the state is not sufficient nexus with [Indiana] to justify the imposition of tax upon the secured party...." Id. Taxpayer argues that it is entitled to the same tax treatment as Reynolds; taxpayer states that, "these sales from the consignment inventory are in form no different than the sales [taxpayer] makes these customers which do not come out of that consignment inventory."

However, the court in Reynolds found that the income was exempt because "[t]he products were shipped, upon order for a stated price, warehoused in consignee's warehouse, (not Reynolds') and insured by the consignee who paid the property tax, and the consignee was given power under the contract and the UCC to defeat Reynolds' title by sale to any person it desired in the normal course of business in its own name, at a price suitable to the consignee." Id. The facts in the Reynolds case are not identical to the taxpayer's own inventory-transactions. In Reynolds, the out-of-state petitioner was transferring the property to Indiana distributors which – in turn – sold the property to Indiana customers. However, taxpayer does not place the telephone equipment at the two Indiana locations in order to allow the two Indiana customers to sell the equipment to third-parties. Taxpayer maintains an inventory of equipment inside Indiana and sells that equipment to the two Indiana customers. The taxpayer does not merely retain a security interest in the property; taxpayer owns the equipment until such time as the Indiana customer decides it needs the equipment. Taxpayer maintains the inventory, the Indiana customers take the equipment out of inventory, and the customers pay for the equipment. Unlike Reynolds, taxpayer is not simply maintaining a transitory security interest in the equipment; taxpayer owns the equipment stored in Indiana until the time arrives that the customers have need of the equipment and remove the equipment from the inventory of available goods.

By placing the equipment on consignment at the Indiana locations, taxpayer has established an Indiana "business situs." 45 IAC 1.1-1-3(a) states that, "A 'business situs' arises where possession and control of a property right have been localized in some business or investment activity away from the owner's domicile." Among other activities, an out-of-state entity may establish an Indiana business situs by "[m]aintenance of an inventory or stocks of goods for sale, distribution, or manufacture." Taxpayer's Indiana business situs is based upon its consignment inventory of telephone equipment over which its exercises possession and control.

Because taxpayer has maintained an inventory of telephone equipment within Indiana, it has established a "business situs." When taxpayer was paid for the equipment in that inventory, taxpayer received "taxable gross income derived from activities... within Indiana...." IC 6-2.1-2-2(a)(2).

FINDING

Taxpayer's protest is respectfully denied.

II. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer requests that the Department abate the ten-percent negligence. Taxpayer maintains that it acted in good faith depending on the expertise provided by third-party tax preparers and on the Reynolds decision.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

The Department agrees that taxpayer's failure to report income received from Indiana consignment sales was not the result of a "failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420030076.LOF

LETTER OF FINDINGS: 03-0076
Indiana Sales and Use Tax
For 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Leased Automobiles – Sales and Use Tax.

Authority: IC 6-2.5-2-1; IC 6-2.5-3-2; IC 6-18-2-1(a); Hi-Way Dispatch, Inc. v. Indiana Dept. of State Revenue, 756 N.E.2d 587 (Ind. Tax Ct. 2001); 45 IAC 2.2-3-5(b); 45 IAC 2.2-4-27(a); 45 IAC 2.2-4-27(b); 45 IAC 2.2-4-27(c); Black's Law Dictionary (7th ed. 1999).

Taxpayer argues that it was not required to collect Indiana sales tax at the time it leased cars to Indiana residents.

STATEMENT OF FACTS

Taxpayer is an out-of-state automobile dealer. Taxpayer sells used cars and also leases used cars. The vehicles are leased to both Indiana and out-of-state residents. Taxpayer retains the leases during the life-time of the agreements. Taxpayer states that before 1999, it was unaware that it was required to collect Indiana sales tax for lease transactions made with Indiana residents. After 1999, taxpayer registered to collect Indiana sales tax. However, taxpayer did not collect sales tax from all Indiana lessees. In some instances, the Indiana lessees apparently chose to register their vehicles in taxpayer's home state. In those instances, the taxpayer collected that home state's sales tax.

The Indiana Department of Revenue conducted a review of taxpayer's business records and concluded that taxpayer should have been collecting sales tax on lease payments received from Indiana residents. Taxpayer disagreed with this conclusion, submitted a protest to that effect, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings results.

DISCUSSION

I. Leased Automobiles – Sales and Use Tax.

The issue is whether taxpayer should have been collecting sales on vehicles purchased by Indiana residents but which were purportedly registered at the out-of-state location. In addition, the issue is whether taxpayer should be assessed additional sales tax on leases entered into with Indiana residents before the time taxpayer registered with Indiana to collect the tax.

Taxpayer also sets out a secondary argument. Taxpayer maintains that officials with both the Indiana Motor Vehicle Department and the Department of Revenue (Department) misinformed the taxpayer leading it to believe that it was not required to collect sales tax on leases with Indiana residents when those vehicles were registered at the out-of-state location.

A. Automobile Leases.

Indiana imposes a sales tax on retail transactions, IC 6-2.5-2-1, and a complementary use tax on tangible personal property that is stored, used, or consumed within the state. IC 6-2.5-3-2.

The regulation states that money received from leasing automobiles is subject to sales tax. "In general, the gross receipts from renting or leasing tangible personal property are taxable." 45 IAC 2.2-4-27(a). For purposes of determining the applicability of the tax, the lessor is designated as a "retail merchant," and the lease arrangement is designated as a "retail transaction." 45 IAC 2.2-4-27(b). In addition, the regulation makes no distinction between in-state and out-of-state lessors. "Every person engaged in the business of the rental or leasing of tangible personal property... shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing." Id. The in-state or out-of-state lessor is specifically charged with the responsibility of collecting the use tax. "The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana." 45 IAC 2.2-4-27(c).

Therefore, because taxpayer was leasing vehicles to Indiana residents, taxpayer was a "retail merchant" engaging in "retail transactions" and had the responsibility of collecting Indiana sales tax. "The sale of any vehicle required to be licensed by the state for highway use in Indiana shall constitute selling at retail and shall be subject to the sales or use tax unless such purchaser is entitled to one of more... exemption[]." 45 IAC 2.2-3-5(b).

IC 6-18-2-1(a) requires that all Indiana residents – with certain limited exceptions – must register their vehicles with this state. "Within sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by the person that (1) are subject to the motor vehicle excise tax under IC 6-6-5; and (2) will be operated in Indiana." Therefore, when the taxpayer leases a car to an Indiana resident – and the vehicle is used in this state – the taxpayer must collect the sales tax on the lease payments. The only possible exception would be under a set of circumstances in which the Indiana lessee leases a vehicle that is not used in Indiana and is not subject to the state's motor vehicle excise tax.

B. Equitable Estoppel.

Nonetheless, taxpayer argues that the additional assessment of previously uncollected sales tax cannot stand because taxpayer – with the best of intentions – relied to his detriment on the erroneous advice provided by both the Department and the Indiana Bureau of Motor Vehicles. According to taxpayer, it consulted with nearby state officials who advised taxpayer that – as an out-of-state business – it was not necessary to collect sales tax. In addition, taxpayer was purportedly informed that it was unnecessary to collect sales tax from Indiana residents when the subject vehicles were licensed outside
Indiana. In effect, taxpayer is setting out an equitable estoppel argument; because the taxpayer depended on the state to provide correct sales tax information and to clarify any incorrect information, the Department may not now belatedly require that taxpayer pay previously uncollected sales tax.

Equitable estoppel is a defensive doctrine which "prevents one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way...." Black's Law Dictionary 571 (7th ed. 1999). Taxpayer argues that the Indiana officials induced taxpayer into believing it was not necessary to collect sales tax from Indiana residents. Taxpayer maintains that, after having relied upon repeated statements of qualified state representatives, the Department may not afterwards back-track on its position to the taxpayer's detriment.

"Equitable estoppel cannot ordinarily be applied against government entities." Hi-Way Dispatch, Inc. v. Indiana Dept. of State Revenue, 756 N.E.2d 587, 598 (Ind. Tax Ct. 2001). However, application of the doctrine against a government entity is not absolutely prohibited. Id. The exception to this general rule is where "the public interest would be threatened by the government's conduct." Id.

Even accepting taxpayer's assertion – that it relied on incorrect guidance from both the Department and the Indiana Bureau of Motor Vehicles to its detriment – the Department does not conclude that the incorrect advice ever threatened the public's interest. Taxpayer may indeed have relied in good faith upon the incorrect advice offered by state officials; nonetheless, the Department is in no position to abate the sales tax assessment on the ground that taxpayer received misleading or incorrect information.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220030187P.LOF

LETTER OF FINDINGS NUMBER: 03-0187P
Income Tax
Periods Ending November 1, 1997 Through October 30, 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. Tax Administration – Penalty

Authority: IC 6-8.1-5-1; 45 IAC 15-11-2

The taxpayer protests the assessment of a penalty.

STATEMENT OF FACTS

The taxpayer operates retail jewelry stores in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty assessment be abated. The taxpayer states,

We respectfully request an abatement of the penalty amounts due to reasonable cause and timely payment/filing history.

45 IAC 15-11-2(b) states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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 auditor contends that the taxpayer was negligent since it failed to accurately report taxable income. Under IC 6-8.1-5-1 the burden of proof is on the taxpayer and the Department's assessment is considered as *prima facie* valid. The taxpayer offers no arguments or evidence, and merely asserts "reasonable cause." As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0320030200P.LOF

LETTER OF FINDINGS NUMBER: 03-0200P
Withholding Tax
For the Month January 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Bad Check Penalty

Authority: IC 6-8.1-10-5

The taxpayer protests the bad check penalty.

STATEMENT OF FACTS

The bad check penalty was assessed on a returned check resulting from a withholding tax return filed for the month of January 2003.

The taxpayer is a small corporation.

I. Tax Administration – Bad Check Penalty

DISCUSSION

The taxpayer requests waiver of the 100% bad check penalty as the error was unintentional and the result of the taxpayer failing to sign the original check that was sent to the Department for payment of the monthly withholding taxes. Furthermore, the taxpayer

states the taxpayer did not receive the original notice.

The Department points out that the point of contention for the 100% bad check penalty is whether or not the taxpayer received the original notice sent by the Department on March 10, 2003. The taxpayer says the original notice was not received. Department records indicate the notice was sent to the correct address. According to statutory regulations, if Department records indicate the billing is sent to the correct address, the mailing of the billing is considered legally valid.

The statute for bad checks, IC 6-8.1-10-5(c) reads: "If the person subject to the penalty under this section can show that there is reasonable cause for the check not being honored, the department may waive the penalty imposed under this section."

Reasonable cause is defined in 45 IAC 15-11-2(b) as: "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 Department finds the taxpayer was inattentive to tax duties as Department records indicate the original notice was sent to the taxpayer and the taxpayer did not respond to the billing until the 100 % penalty Demand Notice was sent to the taxpayer. Inattention is negligence and negligence is subject to 100% penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0320030210P.LOF

LETTER OF FINDINGS NUMBER: 03-0210P
Withholding Tax
For the Month of May 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed for the late filing of the monthly withholding tax return for May 2001.

The taxpayer is a corporation domiciled in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the Department took too much time, almost two years, in sending the original proposed assessment to the taxpayer. Because of the lengthy time, the taxpayer was unable to review the filing records as the filing records are in storage at the taxpayer's place of business and it is difficult for the taxpayer to access the records needed to research the discrepancy.

The Department points out the statute of limitations is three years in this instance both for the taxpayer and the Department. As the Department sent the notice within the three year period, the notice is legally deemed to be timely sent.

The burden of proof in this situation is on the taxpayer. It is the taxpayer's responsibility to provide the records which will support the taxpayer's contention the penalty should be waived. Nevertheless, the Department does have the records and the records show the taxpayer filed three days late.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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 Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied

DEPARTMENT OF STATE REVENUE

0220030262P.LOF

LETTER OF FINDINGS NUMBER: 03-0262P
Income Tax
Calendar Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a "no activity" income tax return for the calendar year 2001.

The taxpayer is a company located in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the late penalty should be waived as the error was the result of an assumption. The attorney in question filed with the Secretary of State papers for the initiation of the company. The attorney assumed the Secretary of State's papers would suffice as there was no transfer of assets to the taxpayer until the following year. This situation resulted in the income tax return being filed late by the taxpayer's accountant.

The Department points out that the State of Indiana's regulations require the filing of an income tax return for a tax year where there is no tax liability.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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 Department finds the taxpayer was ignorant of tax duties. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

42-20030271.LOF

LETTER OF FINDINGS NUMBER: 03-0271 IRP & IFTA
International Registration Plan (IRP)
International Fuel Tax Agreement (IFTA)
For 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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. IRP – Assessment

Authority: 1999 IRP Information Handbook; IRP 232

Registrant protests auditor's classification of his records as "Inadequate," and the resulting assessments.

II. IFTA – Assessment

Authority: IFTA.VII.R700; IFTA A550

The taxpayer protested the department's rejection of new fuel tax records prepared and submitted by taxpayer after an IFTA audit assessment was made based on taxpayer's original information available.

STATEMENT OF FACTS

The Registrant/taxpayer owned and operated three road tractors during the audit period. Two of the road tractors were leased throughout the audit period and one was not leased. The registrant/taxpayer used the non-leased road tractor to perform transportation services for an Indiana oil company. The auditor determined that registrant/taxpayer's records for the audit were "non-existent" and deemed taxpayer/registrant's record keeping as inadequate for apportionment of mileage between the jurisdictions and to establish fuel tax liabilities. The auditor made both IRP and IFTA assessments. Registrant/taxpayer is protesting these adjustments and has provided documentation related to all three vehicles in the form of summaries of mileage and fuel used by them.

I. IRP – Assessment

DISCUSSION

For the IRP audit, registrant presented no mileage records relevant to the audit period and the auditor consequently found registrant's records inadequate and made appropriate assessments. These assessments were made both on fleet 1, the two leased vehicles, and fleet 2, the unleased vehicle. The assessments were based upon monthly statements prepared by the company who leased the vehicles (fleet 1) and based on the number of trips made to each known location which were identified from records supplied by the customer of registrant (fleet 2).

The 1999 IRP Information Handbook addresses this issue at IRP 232, which states:

"Operational Records" means documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets and logs.

The reference on record keeping requirements is amplified on page 21, which states in relevant part:

Your operational records must be documents that support the miles traveled in each jurisdiction, and the total miles traveled.

Registrant protested the auditor's report that the registrant's recordkeeping was insufficient and the auditor's consequent assessment for IRP fees.

The additional documentation submitted by the registrant pursuant to this protest does not overcome this finding. The records submitted provide summaries that differ from the audit's conclusions, but they are simply summaries without required supporting documentation- such as fuel reports, trip sheets and logs- to sustain a reversal or revision of the audit's assessment.

FINDINGS

Registrant protest denied.

II. IFTA – Assessment

DISCUSSION

The department, pursuant to an IFTA audit, requested taxpayer records pursuant to IFTA Article VII, R700 requirements. After the assessment, taxpayer submitted a protest to the audit findings and assessment and provided additional documentation for review. For IFTA reporting purposes, the taxpayer was not responsible for the two leased vehicles (per the lease agreement). He was responsible for reporting the non-leased vehicle. The taxpayer failed to present any records to substantiate the reported information for the non-leased vehicle. The audit assessment relied on the records supplied by the customer of the taxpayer.

Taxpayer argues that by its calculations the fuel consumption used in the audit determination was incorrect. IFTA article A550 requires that in the absence of adequate records, a standard 4.00 MPG rate can be used to compute total fuel consumption. The auditor chose to use an average MPG of the leased vehicles (which had sufficient documentation to establish their MPG) to apply to the third vehicle, for which no records were available. This resulted in a MPG better for the taxpayer than the 4 MPG required by A550, yet taxpayer insisted that based on differences in the types of vehicles and loads carried by the third vehicle, its mileage should have been rated even better. Department would note that sufficient documentation would resolve this issue, and absent this the audit determination stands.

Taxpayer has presented summary documents to establish a lower assessment. Taxpayer does not cite any IFTA provisions to support the claim that summary documents can substitute for required source documentation. Taxpayer's arguments and evidence fail to provide proof that the assessment was either erroneous or excessive.

FINDINGS

Taxpayer protest denied.

DEPARTMENT OF STATE REVENUE

1020030306P.LOF

LETTER OF FINDINGS NUMBER: 03-0306P
Tax Administration—Penalty
Tax Administration—Interest
For the Years 1998-2000

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

II. Tax Administration—Interest

Authority: IC § 6-8.1-10-1; 45 IAC 15-11-1

Taxpayer protests the interest amount levied upon the base use tax owed to the Department.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer had not reported any of his gross retail sales for the Marion County Food and Beverage Tax. Taxpayer argued in his protest letter that he had collected the tax, but did not know where to send it. Taxpayer submitted no evidence showing he had made a good-faith effort to determine where to send the collected tax.

Taxpayer is a retail vendor with a booth at the Indiana State Fair during the audit years at issue.

I. Tax Administration-Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the regulation cited *supra*, and can be waived based on a showing of sufficient cause:

> 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 Department finds the taxpayer did not act with reasonable care in that taxpayer did not report gross retail sales for the Marion County Food and Beverage Tax. Taxpayer did not remit the sales tax collected. Taxpayer admits he did not remit the collected tax; that admission is an admission of negligence. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.

II. Tax Administration—Interest

DISCUSSION

Interest is imposed by the statute cited *supra*, and cannot be waived.

FINDING

Taxpayer's request to abate the interest assessment is denied.

DEPARTMENT OF STATE REVENUE

0420030311P.LOF

LETTER OF FINDINGS NUMBER: 03-0311P
Tax Administration—Penalty
Tax Administration—Interest
For the Years 1999-2001

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana

Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

II. Tax Administration—Interest

Authority: IC § 6-8.1-10-1; 45 IAC 15-11-1

Taxpayer protests the interest amount levied upon the base use tax owed to the Department.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer had charged, remitted gross retail taxes on sales of windows, glass, and mirrors during the audit years at issue. Taxpayer argues she did not charge sales tax because she received misinformation from the Department.

Taxpayer does window replacements and repairs for residential and business customers in Indiana, Illinois, and Texas.

I. Tax Administration-Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the statute and regulation cited *supra*, and can be waived based on a showing of sufficient cause:

> 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 Department finds the taxpayer did not act with reasonable care in that taxpayer did not charge, collect, and remit gross retail taxes on windows, glass, and mirrors sold to customers. Taxpayer did not remit the sales tax collected. Taxpayer alleges she was misinformed; however, taxpayer also admits she did not collect the taxes due on gross retail sales; that admission is an admission of negligence. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.

II. Tax Administration—Interest

DISCUSSION

Interest is imposed by the statute cited *supra*, and cannot be waived.

FINDING

Taxpayer's request to abate the interest assessment is denied.

DEPARTMENT OF STATE REVENUE

0320030316P.LOF

LETTER OF FINDINGS NUMBER: 03-0316P
Withholding Tax
For the Months of December 2002 and January 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed for the late filing of monthly withholding tax returns for the period December 2002 and January 2003.

The taxpayer is a corporation domiciled in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error is the result of a shortage of personnel.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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 Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0420030326P.LOF

LETTER OF FINDINGS NUMBER: 03-0326P
Sales & Use Tax
For the month of February 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a monthly sales tax return for the month of February 2003.

The taxpayer is a company located in Indianapolis.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the late penalty should be waived as the error was the Post Office's error and not the taxpayer. The taxpayer mailed the tax return on the due date. The taxpayer says the Post Office erred as the Post Office put the next day's date on the mailing resulting in the return being one day late.

State of Indiana tax regulations require the Department to follow the federal postmark in determining timeliness of a particular mailing. In the instant case, the postmark shows the tax return was mailed one day late, and therefore, the Department considers the mailing a late filing. 45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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 Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

04980558.SLOF

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 98-0558
Sales and Use Tax
For the Years 1995, 1996, 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. Sales and Use Tax- Manufacturing Exemption

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-3, 45 IAC 2.2-5-10 (c), Gross Income Tax Division v. National Bank and Trust Co., 79 N.E. 2d 651 (Ind. 1948), Indiana Department of Revenue v. Cave Stone, 457 N.E. 2d 520 (Ind. 1983).

The taxpayer protests the assessment of use tax on three items.

STATEMENT OF FACTS

The taxpayer is engaged in the processing of food products. Its customer is a major fast food chain. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest and penalty after an audit. The taxpayer protested the assessment and a hearing was held.

I. Sales and Use Tax-Manufacturing Exemption

DISCUSSION

Pursuant to IC 6-2.5-3-2 (a), Indiana imposes an excise tax on tangible personal property stored, used or consumed in Indiana. A number of exemptions are available from use tax. All exemptions must be strictly construed against the party claiming the exemption. Gross Income Tax Division v. National Bank and Trust Co., 79 N.E. 2d 651 (Ind. 1948). IC 6-2.5-5-3 provides for the exemption of "manufacturing machinery, tools and equipment which is to be directly used by the purchaser in the direct production, manufacture, fabrication... of tangible personal property."

The taxpayer protests the assessment of use tax on a laser printer, a conveyor belt and the flour corn machine used during the packaging of the product. The first issue to be determined is whether or not these items are used during or after the production process. 45 IAC 2.2-5-8 (d) defines the production process as follows:

> Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging if required.

The items are packged in small groupings within plastic wrap to maintain freshness. The groupings wrapped in plastic are then transported to the boxing area on conveyer belts. The boxes are assembled and moved on a conveyor belt to the packaging area where the product is inserted. The flour corn machine is a mechanical device that presses the product during placement into the cardboard boxes. The laser prints information such as weight, count, supplier, run number and date directly onto the box. This information is not for the taxpayer's internal inventory control. Rather, the customer restaurants require the information so they know exactly what foodstuffs they are receiving and when and where the foodstuffs were produced, allow discussion of the quality of the product and to accommodate a recall if necessary. The customer restaurants are the final consumers of the product. They do not resell the plastic wrapped small groupings of the product. The restaurants take the product out of the plastic wrapping and serve them as part of a meal to their patrons. After the information is printed on the assembled and filled box, the taxpayer has completed the required packaging or production as defined in the regulation. Each of the items in the taxpayer's protest is used during the production process.

Secondly, it must be determined if the protested items qualify for exemption as directly used in the direct production of the taxpayer's product.

In Indiana Department of Revenue v. Cave Stone, 457 N.E. 2d 520, (Ind. 1983) the Indiana Supreme Court found that a piece of equipment qualifies for the manufacturing exemption if it is essential and integral to the production process. 45 IAC 2.2-5-10 (c) further describes manufacturing machinery and tools as exempt if they have an immediate effect on foodstuffs and required packaging property during the production process.

Each of the protested items has a direct effect on the production of the taxpayer's final product. The processed food would not be marketable to the taxpayer's customers, the fast food restaurants, if the protested items did not perform their functions in the packaging of the foodstuffs. Each of the protested items is necessary and essential in the production of the taxpayer's final product.

FINDING

The taxpayer's protest is sustained.

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

10 IAC 1.5	RA	03-102	26 IR 3425	**27 IR 946**
10 IAC 1.5-1-2				*ERR (26 IR 3046)
10 IAC 1.5-1-7				*ERR (26 IR 3046)
10 IAC 1.5-2-2				*ERR (26 IR 3046)
10 IAC 1.5-2-3				*ERR (26 IR 3046)
10 IAC 1.5-2-5				*ERR (26 IR 3046)
10 IAC 1.5-3-5				*ERR (26 IR 3046)
10 IAC 1.5-3-7				*ERR (26 IR 3046)
10 IAC 1.5-3-8				*ERR (26 IR 3046)
10 IAC 1.5-4-7				*ERR (26 IR 3046)
10 IAC 1.5-6	N	03-101	26 IR 3374	**27 IR 450**
10 IAC 3-1-1	A	03-167	26 IR 3909	**27 IR 824**
10 IAC 3-1-2	A	03-167	26 IR 3911	**27 IR 825**

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**
11 IAC 3	N	03-165	26 IR 3911	**27 IR 826**

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

25 IAC 2-19	R	02-150	26 IR 86	*ARR (26 IR 3047)
				26 IR 3313
25 IAC 2-20	R	02-150	26 IR 86	*ARR (26 IR 3047)
				26 IR 3313
25 IAC 5	N	02-150	26 IR 67	*ARR (26 IR 3047)
				26 IR 3296

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	
35 IAC 11	N	03-131	26 IR 3678	

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)

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 14-3-1				*ERR (26 IR 3046)
50 IAC 14-4-1				*ERR (26 IR 382)
				*ERR (26 IR 3046)
50 IAC 14-5-1				*ERR (26 IR 3046)
50 IAC 14-5-3				*ERR (26 IR 3046)
50 IAC 14-6-1				*ERR (26 IR 382)
50 IAC 14-7-1				*ERR (26 IR 382)
50 IAC 14-8-1				*ERR (26 IR 3046)
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 18	N	02-81	26 IR 1117	*AROC (26 IR 1263)
	N	03-235	27 IR 909	
50 IAC 19	N	02-342	26 IR 2397	*ARR (26 IR 3885)
				*AROC (27 IR 287)
				27 IR 450
50 IAC 20	N	03-6	27 IR 908	

TITLE 52 INDIANA BOARD OF TAX REVIEW

52 IAC 1	N	02-206	26 IR 89	**26 IR 2316**
52 IAC 2	N	03-179	26 IR 3915	
52 IAC 3	N	03-179	26 IR 3926	
52 IAC 4	N	03-259	27 IR 555	

TITLE 60 OVERSIGHT COMMITTEE ON PUBLIC RECORDS

60 IAC 2-1-1	A	02-261	26 IR 1118	**26 IR 2604**
60 IAC 2-1-2	R	02-261	26 IR 1121	**26 IR 2607**
60 IAC 2-1-3	R	02-261	26 IR 1121	**26 IR 2607**
60 IAC 2-2-1	A	02-261	26 IR 1118	**26 IR 2604**
60 IAC 2-2-2	A	02-261	26 IR 1118	**26 IR 2604**
60 IAC 2-2-3	A	02-261	26 IR 1119	**26 IR 2605**
60 IAC 2-2-3.1	N	02-261	26 IR 1120	**26 IR 2605**
60 IAC 2-2-4	A	02-261	26 IR 1120	**26 IR 2605**
60 IAC 2-2-5	A	02-261	26 IR 1120	**26 IR 2606**
60 IAC 2-2-5.1	N	02-261	26 IR 1121	**26 IR 2606**
60 IAC 2-2-6	R	02-261	26 IR 1121	**26 IR 2607**
60 IAC 2-2-7	R	02-261	26 IR 1121	**26 IR 2607**

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 4-206	N	03-121	*ER (26 IR 3348)
65 IAC 4-319	N	03-148	*ER (26 IR 3360)
65 IAC 4-329	N	03-237	*ER (27 IR 192)
65 IAC 4-330	N	03-246	*ER (27 IR 199)
65 IAC 4-331	N	03-247	*ER (27 IR 200)
65 IAC 4-333	N	03-292	*ER (27 IR 891)

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 5-5-5	A	03-113		*ER (26 IR 3057)
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 4-1-1	RA	03-132	26 IR 3750	*CPH (27 IR 208)
68 IAC 4-1-2	RA	03-132	26 IR 3751	*CPH (27 IR 208)
68 IAC 4-1-3	RA	03-132	26 IR 3751	*CPH (27 IR 208)
68 IAC 4-1-4	RA	03-132	26 IR 3751	*CPH (27 IR 208)
68 IAC 4-1-5	RA	03-132	26 IR 3752	*CPH (27 IR 208)
68 IAC 4-1-6	RA	03-132	26 IR 3752	*CPH (27 IR 208)
68 IAC 4-1-7	RA	03-132	26 IR 3752	*CPH (27 IR 208)
68 IAC 4-1-8	RA	03-132	26 IR 3753	*CPH (27 IR 208)
68 IAC 4-1-9	RA	03-132	26 IR 3753	*CPH (27 IR 208)
68 IAC 4-1-10	RA	03-132	26 IR 3754	*CPH (27 IR 208)
68 IAC 5	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 6-3	N	03-204	27 IR 212	
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 7-3-6	A	03-244		*ER (27 IR 205)
71 IAC 7.5-1-4	A	03-52		*ER (26 IR 2383)
	A	03-244		*ER (27 IR 205)
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 7.5-6-3	A	03-244		*ER (27 IR 206)
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)
	A	03-293		*ER (27 IR 896)
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	**26 IR 3536**
80 IAC 4-3-5	A	02-200	26 IR 420	**26 IR 3536**
80 IAC 4-4	N	02-243	26 IR 2398	**26 IR 3537**

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

105 IAC 9-1-1	A	03-17	26 IR 2400	**27 IR 451**
105 IAC 9-1-2	A	03-17	26 IR 2400	**27 IR 452**
105 IAC 9-2-1	A	02-231	26 IR 421	**27 IR 7**
105 IAC 9-2-2	R	02-231		**††27 IR 52**
105 IAC 9-2-3	N	02-231		**††27 IR 7**
105 IAC 9-2-4	N	02-231		**††27 IR 7**
105 IAC 9-2-5	N	02-231		**††27 IR 7**
105 IAC 9-2-6	N	02-231		**††27 IR 7**

105 IAC 9-2-7	N	02-231	**††27 IR 8**
105 IAC 9-2-8	N	02-231	**††27 IR 8**
105 IAC 9-2-9	N	02-231	**††27 IR 8**
105 IAC 9-2-10	N	02-231	**††27 IR 8**
105 IAC 9-2-11	N	02-231	**††27 IR 9**
105 IAC 9-2-12	N	02-231	**††27 IR 9**
105 IAC 9-2-13	N	02-231	**††27 IR 9**
105 IAC 9-2-14	N	02-231	**††27 IR 9**
105 IAC 9-2-15	N	02-231	**††27 IR 10**
105 IAC 9-2-16	N	02-231	**††27 IR 10**
105 IAC 9-2-17	N	02-231	**††27 IR 10**
105 IAC 9-2-18	N	02-231	**††27 IR 10**
105 IAC 9-2-19	N	02-231	**††27 IR 10**
105 IAC 9-2-20	N	02-231	**††27 IR 11**
105 IAC 9-2-21	N	02-231	**††27 IR 11**
105 IAC 9-2-22	N	02-231	**††27 IR 11**
105 IAC 9-2-23	N	02-231	**††27 IR 11**
105 IAC 9-2-24	N	02-231	**††27 IR 12**
105 IAC 9-2-25	N	02-231	**††27 IR 12**
105 IAC 9-2-26	N	02-231	**††27 IR 12**
105 IAC 9-2-27	N	02-231	**††27 IR 12**
105 IAC 9-2-28	N	02-231	**††27 IR 12**
105 IAC 9-2-29	N	02-231	**††27 IR 13**
105 IAC 9-2-30	N	02-231	**††27 IR 13**
105 IAC 9-2-31	N	02-231	**††27 IR 13**
105 IAC 9-2-32	N	02-231	**††27 IR 14**
105 IAC 9-2-33	N	02-231	**††27 IR 14**
105 IAC 9-2-34	N	02-231	**††27 IR 14**
105 IAC 9-2-35	N	02-231	**††27 IR 15**
105 IAC 9-2-36	N	02-231	**††27 IR 15**
105 IAC 9-2-37	N	02-231	**††27 IR 15**
105 IAC 9-2-38	N	02-231	**††27 IR 16**
105 IAC 9-2-39	N	02-231	**††27 IR 16**
105 IAC 9-2-40	N	02-231	**††27 IR 16**
105 IAC 9-2-41	N	02-231	**††27 IR 16**
105 IAC 9-2-42	N	02-231	**††27 IR 16**
105 IAC 9-2-43	N	02-231	**††27 IR 17**
105 IAC 9-2-44	N	02-231	**††27 IR 17**
105 IAC 9-2-45	N	02-231	**††27 IR 18**
105 IAC 9-2-46	N	02-231	**††27 IR 18**
105 IAC 9-2-47	N	02-231	**††27 IR 18**
105 IAC 9-2-48	N	02-231	**††27 IR 18**
105 IAC 9-2-49	N	02-231	**††27 IR 19**
105 IAC 9-2-50	N	02-231	**††27 IR 19**
105 IAC 9-2-51	N	02-231	**††27 IR 19**
105 IAC 9-2-52	N	02-231	**††27 IR 19**
105 IAC 9-2-53	N	02-231	**††27 IR 19**
105 IAC 9-2-54	N	02-231	**††27 IR 19**
105 IAC 9-2-55	N	02-231	**††27 IR 20**
105 IAC 9-2-56	N	02-231	**††27 IR 20**
105 IAC 9-2-57	N	02-231	**††27 IR 20**
105 IAC 9-2-58	N	02-231	**††27 IR 21**
105 IAC 9-2-59	N	02-231	**††27 IR 21**
105 IAC 9-2-60	N	02-231	**††27 IR 21**
105 IAC 9-2-61	N	02-231	**††27 IR 22**
105 IAC 9-2-62	N	02-231	**††27 IR 22**
105 IAC 9-2-63	N	02-231	**††27 IR 22**
105 IAC 9-2-64	N	02-231	**††27 IR 22**
105 IAC 9-2-65	N	02-231	**††27 IR 22**
105 IAC 9-2-66	N	02-231	**††27 IR 22**
105 IAC 9-2-67	N	02-231	**††27 IR 23**
105 IAC 9-2-68	N	02-231	**††27 IR 23**
105 IAC 9-2-69	N	02-231	**††27 IR 23**
105 IAC 9-2-70	N	02-231	**††27 IR 23**
105 IAC 9-2-71	N	02-231	**††27 IR 23**
105 IAC 9-2-72	N	02-231	**††27 IR 23**
105 IAC 9-2-73	N	02-231	**††27 IR 24**
105 IAC 9-2-74	N	02-231	**††27 IR 24**
105 IAC 9-2-75	N	02-231	**††27 IR 24**
105 IAC 9-2-76	N	02-231	**††27 IR 24**
105 IAC 9-2-77	N	02-231	**††27 IR 24**
105 IAC 9-2-78	N	02-231	**††27 IR 25**
105 IAC 9-2-79	N	02-231	**††27 IR 25**
105 IAC 9-2-80	N	02-231	**††27 IR 25**
105 IAC 9-2-81	N	02-231	**††27 IR 25**
105 IAC 9-2-82	N	02-231	**††27 IR 25**
105 IAC 9-2-83	N	02-231	**††27 IR 26**
105 IAC 9-2-84	N	02-231	**††27 IR 26**
105 IAC 9-2-85	N	02-231	**††27 IR 26**
105 IAC 9-2-86	N	02-231	**††27 IR 26**
105 IAC 9-2-87	N	02-231	**††27 IR 27**
105 IAC 9-2-88	N	02-231	**††27 IR 27**
105 IAC 9-2-89	N	02-231	**††27 IR 28**
105 IAC 9-2-90	N	02-231	**††27 IR 29**
105 IAC 9-2-91	N	02-231	**††27 IR 30**
105 IAC 9-2-92	N	02-231	**††27 IR 30**
105 IAC 9-2-93	N	02-231	**††27 IR 30**
105 IAC 9-2-94	N	02-231	**††27 IR 31**
105 IAC 9-2-95	N	02-231	**††27 IR 31**
105 IAC 9-2-96	N	02-231	**††27 IR 31**
105 IAC 9-2-97	N	02-231	**††27 IR 31**
105 IAC 9-2-98	N	02-231	**††27 IR 32**
105 IAC 9-2-99	N	02-231	**††27 IR 32**
105 IAC 9-2-100	N	02-231	**††27 IR 32**
105 IAC 9-2-101	N	02-231	**††27 IR 32**
105 IAC 9-2-102	N	02-231	**††27 IR 33**
105 IAC 9-2-103	N	02-231	**††27 IR 33**
105 IAC 9-2-104	N	02-231	**††27 IR 33**
105 IAC 9-2-105	N	02-231	**††27 IR 34**
105 IAC 9-2-106	N	02-231	**††27 IR 34**
105 IAC 9-2-107	N	02-231	**††27 IR 34**
105 IAC 9-2-108	N	02-231	**††27 IR 34**
105 IAC 9-2-109	N	02-231	**††27 IR 34**
105 IAC 9-2-110	N	02-231	**††27 IR 34**
105 IAC 9-2-111	N	02-231	**††27 IR 35**
105 IAC 9-2-112	N	02-231	**††27 IR 35**
105 IAC 9-2-113	N	02-231	**††27 IR 35**
105 IAC 9-2-114	N	02-231	**††27 IR 36**
105 IAC 9-2-115	N	02-231	**††27 IR 36**
105 IAC 9-2-116	N	02-231	**††27 IR 36**
105 IAC 9-2-117	N	02-231	**††27 IR 36**
105 IAC 9-2-118	N	02-231	**††27 IR 36**
105 IAC 9-2-119	N	02-231	**††27 IR 36**
105 IAC 9-2-120	N	02-231	**††27 IR 36**
105 IAC 9-2-121	N	02-231	**††27 IR 37**
105 IAC 9-2-122	N	02-231	**††27 IR 37**
105 IAC 9-2-123	N	02-231	**††27 IR 37**
105 IAC 9-2-124	N	02-231	**††27 IR 37**
105 IAC 9-2-125	N	02-231	**††27 IR 37**
105 IAC 9-2-126	N	02-231	**††27 IR 37**
105 IAC 9-2-127	N	02-231	**††27 IR 37**
105 IAC 9-2-128	N	02-231	**††27 IR 38**
105 IAC 9-2-129	N	02-231	**††27 IR 38**
105 IAC 9-2-130	N	02-231	**††27 IR 38**
105 IAC 9-2-131	N	02-231	**††27 IR 39**
105 IAC 9-2-132	N	02-231	**††27 IR 39**
105 IAC 9-2-133	N	02-231	**††27 IR 39**
105 IAC 9-2-134	N	02-231	**††27 IR 39**
105 IAC 9-2-135	N	02-231	**††27 IR 39**
105 IAC 9-2-136	N	02-231	**††27 IR 40**
105 IAC 9-2-137	N	02-231	**††27 IR 40**
105 IAC 9-2-138	N	02-231	**††27 IR 40**
105 IAC 9-2-139	N	02-231	**††27 IR 40**
105 IAC 9-2-140	N	02-231	**††27 IR 41**
105 IAC 9-2-141	N	02-231	**††27 IR 41**
105 IAC 9-2-142	N	02-231	**††27 IR 41**
105 IAC 9-2-143	N	02-231	**††27 IR 42**
105 IAC 9-2-144	N	02-231	**††27 IR 42**

105 IAC 9-2-145	N	02-231		††27 IR 42
105 IAC 9-2-146	N	02-231		††27 IR 42
105 IAC 9-2-147	N	02-231		††27 IR 42
105 IAC 9-2-148	N	02-231		††27 IR 42
105 IAC 9-2-149	N	02-231		††27 IR 43
105 IAC 9-2-150	N	02-231		††27 IR 43
105 IAC 9-2-151	N	02-231		††27 IR 43
105 IAC 9-2-152	N	02-231		††27 IR 43
105 IAC 9-2-153	N	02-231		††27 IR 43
105 IAC 9-2-154	N	02-231		††27 IR 44
105 IAC 9-2-155	N	02-231		††27 IR 44
105 IAC 9-2-156	N	02-231		††27 IR 44
105 IAC 9-2-157	N	02-231		††27 IR 44
105 IAC 9-2-158	N	02-231		††27 IR 45
105 IAC 9-2-159	N	02-231		††27 IR 45
105 IAC 9-2-160	N	02-231		††27 IR 45
105 IAC 9-2-161	N	02-231		††27 IR 46
105 IAC 9-2-162	N	02-231		††27 IR 46
105 IAC 9-2-163	N	02-231		††27 IR 46
105 IAC 9-2-164	N	02-231		††27 IR 47
105 IAC 9-2-165	N	02-231		††27 IR 47
105 IAC 9-2-166	N	02-231		††27 IR 47
105 IAC 9-2-167	N	02-231		††27 IR 47
105 IAC 9-2-168	N	02-231		††27 IR 47
105 IAC 9-2-169	N	02-231		††27 IR 47
105 IAC 9-2-170	N	02-231		††27 IR 48
105 IAC 9-2-171	N	02-231		††27 IR 48
105 IAC 9-2-172	N	02-231		††27 IR 48
105 IAC 9-2-173	N	02-231		††27 IR 49
105 IAC 9-2-174	N	02-231		††27 IR 49
105 IAC 9-2-175	N	02-231		††27 IR 49
105 IAC 9-2-176	N	02-231		††27 IR 49
105 IAC 9-2-177	N	02-231		††27 IR 49
105 IAC 9-2-178	N	02-231		††27 IR 50
105 IAC 9-2-179	N	02-231		††27 IR 50
105 IAC 9-2-180	N	02-231		††27 IR 50
105 IAC 9-2-181	N	02-231		††27 IR 50
105 IAC 9-2-182	N	02-231		††27 IR 51
105 IAC 9-2-183	N	02-231		††27 IR 51
105 IAC 9-2-184	N	02-231		††27 IR 51
105 IAC 9-2-185	N	02-231		††27 IR 51
105 IAC 9-2-186	N	02-231		††27 IR 51
105 IAC 9-2-187	N	02-231		††27 IR 51
105 IAC 9-2-188	N	02-231		††27 IR 52
105 IAC 9-2-189	N	02-231		††27 IR 52
105 IAC 9-2-190	N	02-231		††27 IR 52
105 IAC 12-1-2	A	03-58	26 IR 3077	
105 IAC 12-1-5	A	03-58	26 IR 3077	
105 IAC 12-1-14.5	N	03-58	26 IR 3077	
105 IAC 12-1-14.6	N	03-58	26 IR 3077	
105 IAC 12-1-18	A	03-58	26 IR 3077	
105 IAC 12-1-22	A	03-58	26 IR 3077	
105 IAC 12-1-23	A	03-58	26 IR 3078	
105 IAC 12-2-4	A	03-58	26 IR 3078	
105 IAC 12-2-6	A	03-58	26 IR 3078	
105 IAC 12-2-7	A	03-58	26 IR 3078	
105 IAC 12-2-10	A	03-58	26 IR 3078	
105 IAC 12-2-11	A	03-58	26 IR 3078	
105 IAC 12-2-13	A	03-58	26 IR 3079	
105 IAC 12-2-14	A	03-58	26 IR 3079	
105 IAC 12-2-16	A	03-58	26 IR 3079	
105 IAC 12-2-17	A	03-58	26 IR 3080	
105 IAC 12-2-18	N	03-58	26 IR 3080	
105 IAC 12-2-19	N	03-58	26 IR 3080	
105 IAC 12-2-20	N	03-58	26 IR 3080	
105 IAC 12-2-21	N	03-58	26 IR 3081	
105 IAC 12-3-1	A	03-58	26 IR 3082	
105 IAC 12-3-2	A	03-58	26 IR 3082	
105 IAC 12-3-4	A	03-58	26 IR 3082	
105 IAC 12-3-5	A	03-58	26 IR 3083	
105 IAC 12-4-3	A	03-58	26 IR 3084	
105 IAC 12-4-4	A	03-58	26 IR 3084	
105 IAC 12-4-5	A	03-58	26 IR 3084	

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 7-1.2-10	A	03-194	27 IR 558	
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	**26 IR 3538**
210 IAC 1-6-2	A	02-259	26 IR 818	**26 IR 3539**
210 IAC 1-6-3	R	02-259	26 IR 829	**26 IR 3550**
210 IAC 1-6-4	A	02-259	26 IR 818	**26 IR 3539**
210 IAC 1-6-5	A	02-259	26 IR 819	**26 IR 3540**
210 IAC 1-6-6	A	02-259	26 IR 820	**26 IR 3541**
210 IAC 1-6-7	A	02-259	26 IR 821	**26 IR 3542**
210 IAC 1-10	N	02-259	26 IR 821	**26 IR 3542**
210 IAC 5-1-1	A	02-259	26 IR 823	**26 IR 3544**
210 IAC 5-1-2	A	02-259	26 IR 824	**26 IR 3545**
210 IAC 5-1-3	A	02-259	26 IR 824	**26 IR 3545**
210 IAC 5-1-4	A	02-259	26 IR 827	**26 IR 3548**
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**
210 IAC 7	RA	03-54	26 IR 3147	**26 IR 3960**

TITLE 240 STATE POLICE DEPARTMENT

240 IAC 1-4-3	RA	03-98	26 IR 3425	
240 IAC 1-4-24.1	RA	03-98	26 IR 3425	**27 IR 286**
240 IAC 7-1-6	RA	02-139	25 IR 3882	**26 IR 546**

TITLE 250 LAW ENFORCEMENT TRAINING BOARD

250 IAC 2	N	02-339	26 IR 3679	

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2-6	A	02-328	26 IR 1598	*DAG (27 IR 947)
	A	03-212	27 IR 216	
305 IAC 1-3-4	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 216	
305 IAC 1-4-1	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 217	
305 IAC 1-4-2	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 217	
305 IAC 1-5	N	02-328	26 IR 1600	*DAG (27 IR 947)
	N	03-212	27 IR 217	

TITLE 307 INDIANA BOARD OF REGISTRATION FOR SOIL SCIENTISTS

307 IAC	N	03-32	26 IR 2652	*GRAT (27 IR 291)
				27 IR 53
				*ERR (27 IR 538)

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	**26 IR 3318**
312 IAC 2-4-2	A	02-236	26 IR 1126	**26 IR 3318**
312 IAC 2-4-4	A	02-236	26 IR 1127	**26 IR 3318**
312 IAC 2-4-6	A	02-236	26 IR 1127	**26 IR 3319**
312 IAC 2-4-7	A	02-236	26 IR 1127	**26 IR 3319**
312 IAC 2-4-8	R	02-236	26 IR 1131	**26 IR 3323**
312 IAC 2-4-9	A	02-236	26 IR 1128	**26 IR 3319**
312 IAC 2-4-9.5	A	02-236	26 IR 1128	**26 IR 3320**
312 IAC 2-4-10	R	02-236	26 IR 1131	**26 IR 3323**
312 IAC 2-4-12	A	02-236	26 IR 1128	**26 IR 3320**
312 IAC 2-4-13	N	02-236	26 IR 1129	**26 IR 3321**
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	**26 IR 3323**
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	**26 IR 3868**
312 IAC 5-3-1	A	02-236	26 IR 1130	**26 IR 3321**
312 IAC 5-3-2	A	02-236	26 IR 1130	**26 IR 3322**
312 IAC 5-3-3	A	02-236	26 IR 1130	**26 IR 3322**
312 IAC 5-6-5	A	03-92	27 IR 220	
312 IAC 5-6-6	A	02-162	25 IR 4165	**26 IR 1900**
	A	03-29	26 IR 2660	**27 IR 59**
312 IAC 5-13-2	A	03-24	26 IR 2401	**26 IR 3869**
312 IAC 6	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 7	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 8-1-2	A	03-50	26 IR 3085	**27 IR 455**
312 IAC 8-1-4	A	03-50	26 IR 3085	**27 IR 455**
312 IAC 8-2-3	A	03-50	26 IR 3086	**27 IR 456**
312 IAC 8-2-6	A	03-50	26 IR 3088	**27 IR 457**
312 IAC 8-2-9	A	03-50	26 IR 3088	**27 IR 458**
312 IAC 8-2-11	A	03-50	26 IR 3088	**27 IR 458**
312 IAC 9	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 9-2-11	A	03-50	26 IR 3089	**27 IR 459**
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	**26 IR 3866**
312 IAC 9-6-7	A	02-318	26 IR 1967	**26 IR 3868**
312 IAC 9-10-3	A	03-35	26 IR 3374	
312 IAC 9-10-4	A	02-232	26 IR 1602	*AWR (26 IR 3347)
	A	03-149	27 IR 246	
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	**26 IR 3324**
312 IAC 11-5-1	A	03-30	26 IR 2661	**27 IR 61**
312 IAC 12-3-2				*ERR (26 IR 1565)
312 IAC 14	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 15	RA	02-331	26 IR 2133	**27 IR 286**
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	**26 IR 3315**
312 IAC 18-3-12	A	02-201	26 IR 1121	**26 IR 3313**
312 IAC 18-3-15	N	03-213	27 IR 559	
312 IAC 18-3-16	N	03-213	27 IR 560	
312 IAC 18-3-17	N	03-213	27 IR 560	
312 IAC 18-5-2	A	03-213	27 IR 561	
312 IAC 18-5-4	A	03-91	26 IR 3375	
312 IAC 20-2-1.7	N	03-12	26 IR 3084	**27 IR 454**
312 IAC 20-2-4.3	N	03-12	26 IR 3084	**27 IR 454**
312 IAC 20-2-4.7	N	03-12	26 IR 3085	**27 IR 454**
312 IAC 20-3-3	N	03-12	26 IR 3085	**27 IR 454**
312 IAC 20-5	N	02-329	26 IR 2658	**27 IR 452**
312 IAC 22.5				*ERR (26 IR 383)
312 IAC 24	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 25-1-8	A	03-93	27 IR 221	
312 IAC 25-1-45.5	N	02-104	25 IR 4160	*AROC (26 IR 1736)
				26 IR 3860
312 IAC 25-1-60.5	N	02-104	25 IR 4160	*AROC (26 IR 1736)
				26 IR 3860
312 IAC 25-1-75.5	N	03-93	27 IR 222	
312 IAC 25-1-109.5	N	02-104		**††26 IR 3860**
312 IAC 25-1-155.5	N	03-93	27 IR 222	
312 IAC 25-4-17	A	03-93	27 IR 222	
312 IAC 25-4-43	A	02-104	25 IR 4160	*AROC (26 IR 1736)
				26 IR 3860
312 IAC 25-4-45	A	03-93	27 IR 223	
312 IAC 25-4-47	A	02-104	25 IR 4161	*AROC (26 IR 1736)
				26 IR 3861
312 IAC 25-4-49	A	03-93	27 IR 224	
312 IAC 25-4-85	A	02-104	25 IR 4162	*AROC (26 IR 1736)
				26 IR 3862
312 IAC 25-4-87	A	03-93	27 IR 225	
312 IAC 25-4-93	A	02-104	25 IR 4163	*AROC (26 IR 1736)
				26 IR 3863
312 IAC 25-4-102	A	03-93	27 IR 226	
312 IAC 25-4-105.5	N	03-93	27 IR 227	

312 IAC 25-4-113	A	03-93	27 IR 228	
312 IAC 25-4-114	A	03-93	27 IR 228	
312 IAC 25-4-115	A	03-93	27 IR 229	
312 IAC 25-4-118	A	03-93	27 IR 230	
312 IAC 25-5-7	A	03-93	27 IR 231	
312 IAC 25-5-16	A	03-93	27 IR 232	
312 IAC 25-6-12.5	N	02-104	25 IR 4164	*AROC (26 IR 1736) **26 IR 3864**
312 IAC 25-6-17	A	03-93	27 IR 233	
312 IAC 25-6-20	A	03-93	27 IR 235	
312 IAC 25-6-23	A	03-93	27 IR 237	
312 IAC 25-6-25	A	03-93	27 IR 238	
312 IAC 25-6-31	A	03-169	27 IR 248	
312 IAC 25-6-66	A	03-93	27 IR 238	
312 IAC 25-6-76.5	N	02-104	25 IR 4164	*AROC (26 IR 1736) **26 IR 3865**
312 IAC 25-6-81	A	03-93	27 IR 239	
312 IAC 25-6-84	A	03-93	27 IR 241	
312 IAC 25-6-130	A	03-93	27 IR 243	
312 IAC 25-7-1	A	03-93	27 IR 244	
312 IAC 25-7-20	A	03-93	27 IR 246	
312 IAC 25-9-5	A	03-169	27 IR 249	
312 IAC 25-9-8	A	03-169	27 IR 249	

TITLE 326 AIR POLLUTION CONTROL BOARD

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 1-2-90	A	02-337	26 IR 1998	
326 IAC 1-3-4	A	03-69	26 IR 3376	
326 IAC 1-4-1	A	02-88	25 IR 3240	**26 IR 1077**
	A	03-70	26 IR 3092	
326 IAC 1-5-2				*ERR (26 IR 1565)
326 IAC 2-2-1	A	03-68	27 IR 250	
326 IAC 2-2-6	A	03-68	27 IR 256	
326 IAC 2-2-12	A	03-68	27 IR 257	
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)
				*CPH (27 IR 551)
326 IAC 2-6-2	A	01-249	24 IR 3700	*CPH (24 IR 4012)
				*CPH (27 IR 551)
326 IAC 2-6-3	A	01-249	24 IR 3702	*CPH (24 IR 4012)
				*CPH (27 IR 551)
326 IAC 2-6-4	A	01-249	24 IR 3703	*CPH (24 IR 4012)
				*ERR (26 IR 1566)
				*CPH (27 IR 551)
	A	02-337	26 IR 2005	
326 IAC 2-6-5	N	01-249	24 IR 3705	*CPH (24 IR 4012)
				*CPH (27 IR 551)
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)
				27 IR 61
326 IAC 6-1-10.2	A	01-407	26 IR 1994	*CPH (26 IR 2391)
				27 IR 85
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 8-7-7				*ERR (26 IR 1568)
	A	02-337	26 IR 2036	
326 IAC 8-7-10				*ERR (26 IR 1568)
326 IAC 8-8.1-1				*ERR (26 IR 1568)
326 IAC 8-9-2				*ERR (26 IR 1568)
	A	02-337	26 IR 2037	
326 IAC 8-9-3				*ERR (26 IR 1568)
	A	02-337	26 IR 2037	

326 IAC 8-9-4				*ERR (26 IR 1568)
	A	02-337	26 IR 2038	
326 IAC 8-9-5				*ERR (26 IR 1568)
	A	02-337	26 IR 2040	
326 IAC 8-9-6				*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 8-11-2				*ERR (26 IR 1568)
	A	02-337	26 IR 2044	
326 IAC 8-11-3				*ERR (26 IR 1568)
326 IAC 8-11-6				*ERR (26 IR 1568)
	A	02-337	26 IR 2046	
326 IAC 8-11-7				*ERR (26 IR 1569)
	A	02-337	26 IR 2050	
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)
				26 IR 3550
326 IAC 10-3-3				*ERR (26 IR 1569)
326 IAC 10-4-1	A	02-54	26 IR 1134	*CPH (26 IR 2391)
				26 IR 3551
326 IAC 10-4-2	A	02-54	26 IR 1136	*CPH (26 IR 2391)
				26 IR 3552
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)
				26 IR 3558
326 IAC 10-4-10	A	02-54	26 IR 1148	*CPH (26 IR 2391)
				26 IR 3565
326 IAC 10-4-12				*ERR (26 IR 1569)
326 IAC 10-4-13	A	02-54	26 IR 1152	*CPH (26 IR 2391)
				26 IR 3568
326 IAC 10-4-14	A	02-54	26 IR 1155	*CPH (26 IR 2391)
				26 IR 3572
326 IAC 10-4-15	A	02-54	26 IR 1156	*CPH (26 IR 2391)
				26 IR 3572
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 18-2-2				*ERR (26 IR 1572)
	A	02-337	26 IR 2088	
326 IAC 18-2-3				*ERR (26 IR 1572)
	A	02-337	26 IR 2090	
326 IAC 18-2-6	A	02-337	26 IR 2096	
326 IAC 18-2-7	A	02-337	26 IR 2097	
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)
				26 IR 2607
326 IAC 20-25-3	A	02-55	26 IR 92	*CPH (26 IR 811)
				26 IR 2607

326 IAC 20-25-4	A	02-55	26 IR 94	*CPH (26 IR 811) **26 IR 2609**
326 IAC 20-25-5	A	02-55	26 IR 94	*CPH (26 IR 811) **26 IR 2610**
326 IAC 20-25-7	A	02-55	26 IR 95	*CPH (26 IR 811) **26 IR 2610**
326 IAC 20-48	N	02-55	26 IR 95	*CPH (26 IR 811) **26 IR 2611**
326 IAC 20-49	N	02-336	26 IR 3090	
326 IAC 20-50	N	02-336	26 IR 3090	
326 IAC 20-51	N	02-336	26 IR 3090	
326 IAC 20-52	N	02-336	26 IR 3091	
326 IAC 20-53	N	02-336	26 IR 3091	
326 IAC 20-54	N	02-336	26 IR 3091	
326 IAC 20-55	N	02-336	26 IR 3091	
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	**27 IR 459**
326 IAC 23-1-5	A	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-5.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-6.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-7.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-7.6	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-9	A	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-10	A	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-11	A	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-11.5	N	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-12.5	N	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-17	A	02-189	26 IR 2409	**27 IR 462**
326 IAC 23-1-21	A	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-21.5	N	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-22	A	02-189	26 IR 2437	**27 IR 462**
326 IAC 23-1-23	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-26.5	N	02-189	26 IR 2410	
326 IAC 23-1-27	A	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-27.5	N	02-189	26 IR 2410	**27 IR 463**
326 IAC 23-1-31	A	02-337	26 IR 2099	
326 IAC 23-1-32.1	N	02-189	26 IR 2410	**27 IR 463**
326 IAC 23-1-32.2	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34	A	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34.5	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34.8	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-37	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-40	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-42	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-43	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-44	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-45	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-46	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-47	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-48.5	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-52	A	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-52.5	N	02-189	26 IR 2411	**27 IR 464**
326 IAC 23-1-54.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-55.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-58.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-58.7	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-60.1	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-60.5	N	02-189	26 IR 2412	**27 IR 465**
326 IAC 23-1-60.6	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-61.5	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-62.5	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-62.6	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-63	A	02-189	26 IR 2413	**27 IR 466**
326 IAC 23-1-64	A	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.5	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.6	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.7	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-71	N	02-189	26 IR 2414	**27 IR 467**
326 IAC 23-2-1	A	02-189	26 IR 2414	**27 IR 467**
326 IAC 23-2-3	A	02-189	26 IR 2415	**27 IR 467**
326 IAC 23-2-4	A	02-189	26 IR 2416	**27 IR 469**
326 IAC 23-2-5	A	02-189	26 IR 2418	**27 IR 471**
326 IAC 23-2-6	A	02-189	26 IR 2419	**27 IR 471**
326 IAC 23-2-6.5	N	02-189	26 IR 2419	**27 IR 472**
326 IAC 23-2-7	A	02-189	26 IR 2420	**27 IR 473**
326 IAC 23-2-8	A	02-189	26 IR 2421	**27 IR 474**
326 IAC 23-2-9	A	02-189	26 IR 2422	**27 IR 474**
326 IAC 23-3-1	A	02-189	26 IR 2422	**27 IR 475**
326 IAC 23-3-2	A	02-189	26 IR 2422	**27 IR 475**
326 IAC 23-3-3	A	02-189	26 IR 2423	**27 IR 476**
326 IAC 23-3-5	A	02-189	26 IR 2426	**27 IR 479**
326 IAC 23-3-7	A	02-189	26 IR 2426	**27 IR 479**
326 IAC 23-3-11	A	02-189	26 IR 2428	**27 IR 480**
326 IAC 23-3-12	A	02-189	26 IR 2428	**27 IR 481**
326 IAC 23-3-13	A	02-189	26 IR 2428	**27 IR 481**
326 IAC 23-4-1	A	02-189	26 IR 2429	**27 IR 481**
326 IAC 23-4-2	A	02-189	26 IR 2429	**27 IR 482**
326 IAC 23-4-3	A	02-189	26 IR 2429	**27 IR 482**
326 IAC 23-4-4	A	02-189	26 IR 2430	**27 IR 483**
326 IAC 23-4-5	A	02-189	26 IR 2431	**27 IR 484**
326 IAC 23-4-6	A	02-189	26 IR 2432	**27 IR 485**
326 IAC 23-4-7	A	02-189	26 IR 2434	**27 IR 486**
326 IAC 23-4-9	A	02-189	26 IR 2434	**27 IR 487**
326 IAC 23-4-11	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-4-12	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-4-13	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-5	N	02-189	26 IR 2436	**27 IR 489**

TITLE 327 WATER POLLUTION CONTROL BOARD

327 IAC 5-1-1.5	A	02-327	26 IR 3097	*CPH (26 IR 3366)
327 IAC 5-2-9	A	00-136	26 IR 427	**26 IR 2613**
327 IAC 5-2-11.6				*ERR (26 IR 3884)
327 IAC 5-2.1	N	00-136	26 IR 427	**26 IR 2613**
327 IAC 5-4-3	A	01-51	26 IR 3698	
327 IAC 5-4-6	A	01-96	26 IR 845	*CPH (26 IR 1113) **26 IR 3575** *ERR (27 IR 191)
327 IAC 6.1-1-1	A	01-238	26 IR 1165	**26 IR 3596**
327 IAC 6.1-1-3	A	01-238	26 IR 1166	**26 IR 3596**
327 IAC 6.1-1-4	A	01-238	26 IR 1166	**26 IR 3597**
327 IAC 6.1-1-5	A	01-238	26 IR 1167	**26 IR 3597**
327 IAC 6.1-1-7	A	01-238	26 IR 1167	**26 IR 3597**
327 IAC 6.1-2-3	A	01-238	26 IR 1167	**26 IR 3597**
327 IAC 6.1-2-6	A	01-238	26 IR 1167	**26 IR 3597**
327 IAC 6.1-2-6.5	N	01-238		**††26 IR 3598**
327 IAC 6.1-2-7	A	01-238	26 IR 1167	**26 IR 3598**
327 IAC 6.1-2-7.5	N	01-238	26 IR 1167	**26 IR 3598**
327 IAC 6.1-2-8	A	01-238	26 IR 1168	**26 IR 3598**
327 IAC 6.1-2-10	R	01-238	26 IR 1201	**26 IR 3632**
327 IAC 6.1-2-12	R	01-238	26 IR 1201	**26 IR 3632**
327 IAC 6.1-2-13	A	01-238	26 IR 1168	**26 IR 3598**
327 IAC 6.1-2-14	A	01-238	26 IR 1168	**26 IR 3599**
327 IAC 6.1-2-20.5	N	01-238	26 IR 1168	**26 IR 3599**
327 IAC 6.1-2-28	A	01-238	26 IR 1169	**26 IR 3599**
327 IAC 6.1-2-30	A	01-238	26 IR 1169	**26 IR 3599**
327 IAC 6.1-2-31.5	N	01-238	26 IR 1169	**26 IR 3599**
327 IAC 6.1-2-35	A	01-238	26 IR 1169	**26 IR 3600**
327 IAC 6.1-2-42	A	01-238	26 IR 1169	**26 IR 3600**
327 IAC 6.1-2-43	A	01-238	26 IR 1170	**26 IR 3600**
327 IAC 6.1-2-54	A	01-238	26 IR 1170	**26 IR 3600**
327 IAC 6.1-2-55	A	01-238	26 IR 1170	**26 IR 3600**
327 IAC 6.1-2-55.3	N	01-238		**††26 IR 3601**
327 IAC 6.1-2-55.5	N	01-238	26 IR 1170	**26 IR 3601**
327 IAC 6.1-2-61	R	01-238	26 IR 1201	**26 IR 3632**
327 IAC 6.1-3-1	A	01-238	26 IR 1170	**26 IR 3601**
327 IAC 6.1-3-2	A	01-238	26 IR 1171	**26 IR 3602**
327 IAC 6.1-3-3	A	01-238	26 IR 1172	**26 IR 3602**

327 IAC 6.1-3-4	A	01-238	26 IR 1172	**26 IR 3602**
327 IAC 6.1-3-7	A	01-238	26 IR 1172	**26 IR 3603**
327 IAC 6.1-3-8	N	01-238	26 IR 1173	**26 IR 3603**
327 IAC 6.1-4-1	A	01-238	26 IR 1173	**26 IR 3604**
327 IAC 6.1-4-3	A	01-238	26 IR 1173	**26 IR 3604**
327 IAC 6.1-4-4	A	01-238	26 IR 1174	**26 IR 3605**
327 IAC 6.1-4-5	A	01-238	26 IR 1175	**26 IR 3605**
327 IAC 6.1-4-5.5	N	01-238	26 IR 1175	**26 IR 3606**
327 IAC 6.1-4-6	A	01-238	26 IR 1176	**26 IR 3607**
327 IAC 6.1-4-7	A	01-238	26 IR 1177	**26 IR 3608**
327 IAC 6.1-4-8	A	01-238	26 IR 1178	**26 IR 3609**
327 IAC 6.1-4-9	A	01-238	26 IR 1179	**26 IR 3610**
327 IAC 6.1-4-10	A	01-238	26 IR 1181	**26 IR 3612**
327 IAC 6.1-4-11	A	01-238	26 IR 1182	**26 IR 3613**
327 IAC 6.1-4-13	A	01-238	26 IR 1182	**26 IR 3613**
327 IAC 6.1-4-16	A	01-238	26 IR 1184	**26 IR 3615**
327 IAC 6.1-4-17	A	01-238	26 IR 1186	**26 IR 3617**
327 IAC 6.1-4-18	A	01-238	26 IR 1187	**26 IR 3618**
327 IAC 6.1-4-19	A	01-238	26 IR 1187	**26 IR 3618**
327 IAC 6.1-5-1	A	01-238	26 IR 1187	**26 IR 3618**
327 IAC 6.1-5-2	A	01-238	26 IR 1187	**26 IR 3618**
327 IAC 6.1-5-3	A	01-238	26 IR 1188	**26 IR 3619**
327 IAC 6.1-5-4	A	01-238	26 IR 1188	**26 IR 3619**
327 IAC 6.1-6-1	A	01-238	26 IR 1189	**26 IR 3620**
327 IAC 6.1-6-2	A	01-238	26 IR 1189	**26 IR 3620**
327 IAC 6.1-6-3	A	01-238	26 IR 1190	**26 IR 3621**
327 IAC 6.1-7-1	A	01-238	26 IR 1191	**26 IR 3622**
327 IAC 6.1-7-2	A	01-238	26 IR 1191	**26 IR 3622**
327 IAC 6.1-7-3	A	01-238	26 IR 1192	**26 IR 3623**
327 IAC 6.1-7-4	A	01-238	26 IR 1193	**26 IR 3624**
327 IAC 6.1-7-5	A	01-238	26 IR 1193	**26 IR 3625**
327 IAC 6.1-7-6	A	01-238	26 IR 1194	**26 IR 3625**
327 IAC 6.1-7-9	A	01-238	26 IR 1195	**26 IR 3626**
327 IAC 6.1-7-10	A	01-238	26 IR 1195	**26 IR 3626**
327 IAC 6.1-7-11	A	01-238	26 IR 1196	**26 IR 3627**
327 IAC 6.1-7.5	N	01-238	26 IR 1197	**26 IR 3628**
327 IAC 6.1-8-1	A	01-238	26 IR 1198	**26 IR 3629**
327 IAC 6.1-8-2	A	01-238	26 IR 1199	**26 IR 3630**
327 IAC 6.1-8-3	A	01-238	26 IR 1199	**26 IR 3630**
327 IAC 6.1-8-4	A	01-238	26 IR 1199	**26 IR 3630**
327 IAC 6.1-8-5	A	01-238	26 IR 1200	**26 IR 3631**
327 IAC 6.1-8-6	A	01-238	26 IR 1200	**26 IR 3631**
327 IAC 6.1-8-7	A	01-238	26 IR 1200	**26 IR 3632**
327 IAC 6.1-8-8	A	01-238	26 IR 1201	**26 IR 3632**
327 IAC 8-2-1	A	01-348	26 IR 101	*CPH (26 IR 812)
				26 IR 2808
327 IAC 8-2-5	A	01-348	26 IR 105	*CPH (26 IR 812)
				26 IR 2812
327 IAC 8-2-5.3	A	01-348	26 IR 107	*CPH (26 IR 812)
				26 IR 2814
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)
				26 IR 2816
327 IAC 8-2-13	A	01-348	26 IR 110	*CPH (26 IR 812)
				26 IR 2817
327 IAC 8-2-29	R	01-348	26 IR 152	*CPH (26 IR 812)
				26 IR 2859
327 IAC 8-2-30	A	01-348	26 IR 110	*CPH (26 IR 812)
				26 IR 2817
327 IAC 8-2-31	A	01-348	26 IR 111	*CPH (26 IR 812)
				26 IR 2818
327 IAC 8-2-48	N	01-348	26 IR 111	*CPH (26 IR 812)
				26 IR 2818
327 IAC 8-2.1-3	A	01-348	26 IR 112	*CPH (26 IR 812)
				26 IR 2818
327 IAC 8-2.1-4	A	01-348	26 IR 114	*CPH (26 IR 812)
				26 IR 2821
327 IAC 8-2.1-6	A	01-348	26 IR 115	*CPH (26 IR 812)
				26 IR 2822
327 IAC 8-2.1-8	A	01-348	26 IR 121	*CPH (26 IR 812)
				26 IR 2828
327 IAC 8-2.1-16	A	01-348	26 IR 122	*CPH (26 IR 812)
				26 IR 2829
327 IAC 8-2.1-17	A	01-348	26 IR 126	*CPH (26 IR 812)
				26 IR 2833
327 IAC 8-2.5	N	01-348	26 IR 133	*CPH (26 IR 812)
				26 IR 2840
327 IAC 8-2.6	N	01-348	26 IR 146	*CPH (26 IR 812)
				26 IR 2854
327 IAC 15-2-3	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 830
327 IAC 15-2-6	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 830
327 IAC 15-2-8	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 831
327 IAC 15-2-9	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 831
327 IAC 15-3-1	A	01-95	26 IR 1616	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 832
327 IAC 15-3-2	A	01-95	26 IR 1616	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 832
	A	02-327	26 IR 3098	*CPH (26 IR 3366)
327 IAC 15-3-3	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 832
327 IAC 15-5-1	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 833
327 IAC 15-5-2	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 833
327 IAC 15-5-3	A	01-95	26 IR 1618	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 834
327 IAC 15-5-4	A	01-95	26 IR 1619	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 834
327 IAC 15-5-5	A	01-95	26 IR 1620	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 836
327 IAC 15-5-6	A	01-95	26 IR 1621	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 837
327 IAC 15-5-6.5	N	01-95	26 IR 1622	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 838
327 IAC 15-5-7	A	01-95	26 IR 1625	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 840

327 IAC 15-5-7.5	N	01-95	26 IR 1627	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 843**
327 IAC 15-5-8	A	01-95	26 IR 1628	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 843**
327 IAC 15-5-10	A	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 844**
327 IAC 15-5-11	R	01-95	26 IR 1646	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 863**
327 IAC 15-5-12	N	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 844**
327 IAC 15-6-1	A	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 845**
327 IAC 15-6-2	A	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 845**
327 IAC 15-6-4	A	01-95	26 IR 1632	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 848**
327 IAC 15-6-5	A	01-95	26 IR 1635	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 851**
327 IAC 15-6-6	A	01-95	26 IR 1635	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 851**
327 IAC 15-6-7	A	01-95	26 IR 1635	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 851**
327 IAC 15-6-7.3	N	01-95	26 IR 1641	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 857**
327 IAC 15-6-7.5	N	01-95	26 IR 1643	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 858**
327 IAC 15-6-8.5	N	01-95	26 IR 1643	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 859**
327 IAC 15-6-9	A	01-95		††**27 IR 859**
327 IAC 15-6-10	N	01-95	26 IR 1643	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 859**
327 IAC 15-6-11	N	01-95	26 IR 1643	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 860**
327 IAC 15-6-12	N	01-95	26 IR 1644	*CPH (26 IR 1961) *CPH (26 IR 2392) *CPH (26 IR 2645) **27 IR 860**
327 IAC 15-13	N	01-96	26 IR 847	*CPH (26 IR 1113) **26 IR 3577** *ERR (27 IR 191)
327 IAC 15-14	N	02-327	26 IR 3098	*CPH (26 IR 3366)
327 IAC 15-15	N	01-51	26 IR 3701	

TITLE 329 SOLID WASTE MANAGEMENT BOARD

329 IAC 3.1-1-7	A	02-235	26 IR 1240	*CPH (26 IR 1962) *CPH (26 IR 2647) *CPH (26 IR 3074) *CPH (26 IR 3367) *CPH (26 IR 3672)
329 IAC 3.1-4-1	A	02-235	26 IR 1240	*CPH (26 IR 1962) *CPH (26 IR 2647) *CPH (26 IR 3074) *CPH (26 IR 3367) *CPH (26 IR 3672)
329 IAC 3.1-7-2	A	02-235	26 IR 1240	*CPH (26 IR 1962) *CPH (26 IR 2647) *CPH (26 IR 3074) *CPH (26 IR 3367) *CPH (26 IR 3672)
329 IAC 3.1-7-15				*ERR (26 IR 3046)
329 IAC 3.1-9-2	A	02-235	26 IR 1241	*CPH (26 IR 1962) *CPH (26 IR 2647) *CPH (26 IR 3074) *CPH (26 IR 3367) *CPH (26 IR 3672)
	A	02-160	27 IR 912	
329 IAC 3.1-10-2	A	02-235	26 IR 1242	*CPH (26 IR 1962) *CPH (26 IR 2647) *CPH (26 IR 3074) *CPH (26 IR 3367) *CPH (26 IR 3672)
329 IAC 3.1-12-2				*ERR (26 IR 3046)
329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-4	A	01-161	26 IR 1209	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-10.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-10.2	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-10.4	N	01-161	26 IR 1209	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-10.6	N	01-161	26 IR 1209	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-10.8	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)

329 IAC 9-1-14	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14.3	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14.5	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-25	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-27	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-29.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-36	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-39.5	N	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41.5	N	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-42.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-47	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-47.1	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2-1	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2-2	A	01-161	26 IR 1214	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2.1-1	A	01-161	26 IR 1215	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3-1	A	01-161	26 IR 1216	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3-2	N	01-161	26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-1	A	01-161	26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-2	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-3	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-4	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-4-3	A	01-161	26 IR 1220	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-4-4	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-1	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)

329 IAC 9-5-2	A	01-161	26 IR 1223	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-3.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-3.2	N	01-161	26 IR 1223	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-4.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-4.2	N	01-161	26 IR 1224	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-5.1	A	01-161	26 IR 1224	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-6	A	01-161	26 IR 1226	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-7	A	01-161	26 IR 1227	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-1	A	01-161	26 IR 1229	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-2	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-2.5	N	01-161	26 IR 1230	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-3	A	01-161	26 IR 1234	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-4	A	01-161	26 IR 1234	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-5	A	01-161	26 IR 1235	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-7-1	A	01-161	26 IR 1235	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-7-2	A	01-161	26 IR 1236	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-7-4	A	01-161	26 IR 1237	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-7-6	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 10-1-4	A	00-185	26 IR 432	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-1-4.5	N	00-185	26 IR 433	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-6	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-11	A	00-185	26 IR 433	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-29	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-29.5	N	01-288	26 IR 1653	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-32	A	01-288	26 IR 1653	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-33	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-41	A	00-185	26 IR 433	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-41.1	A	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-53	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)

329 IAC 10-2-60	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-63.5	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-64	A	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-66.1	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-66.2	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-66.3	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-69	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-72.1	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-74	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-75	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-75.1	N	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-76	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-96	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-97.1	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-99	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-100	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-105.3	N	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-106	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3366) *CPH (26 IR 3073) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-109	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-111.5	N	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-112	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-115	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-116	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-117	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-121.1	A	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-127	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-128	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-130	A	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-132.2	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)

329 IAC 10-2-132.3	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-135.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-135.5	N	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-142.5	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-147.2	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-149	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-158	A	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-165.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-172.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-174	A	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-177	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-179	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-181.2	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-181.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-181.6	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-187.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-197.1	A	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-199.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-201.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-203	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-2-205	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-3-1	A	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-3-2	A	00-185	26 IR 439	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-3-3	A	00-185	26 IR 439	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-5-1	A	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-6-4	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-7.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-7.2	N	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-8.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-8.2	N	01-288	26 IR 1657	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-9-2	A	01-288	26 IR 1659	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-9-4	A	01-288	26 IR 1659	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-10-1	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)

329 IAC 10-10-2	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-11-2.1	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-11-2.5	A	00-185	26 IR 441	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-11-5.1	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-11-6	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-12-1	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-13-1	A	00-185	26 IR 445	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-13-5	A	00-185	26 IR 445	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-13-6	A	00-185	26 IR 446	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-14-1	A	00-185	26 IR 446	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-14-2	A	01-288	26 IR 1661	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-15-1	A	00-185	26 IR 447	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-15-2	A	00-185	26 IR 448	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-15-5	A	00-185	26 IR 449	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-15-8	A	00-185	26 IR 450	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-15-12	N	00-185	26 IR 451	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-16-1	A	00-185	26 IR 452	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-16-8	A	00-185	26 IR 453	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-16-12				*ERR (26 IR 3046)
329 IAC 10-17-2	A	00-185	26 IR 453	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-17-7	A	00-185	26 IR 454	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-17-9	A	00-185	26 IR 456	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-17-12	A	00-185	26 IR 457	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-17-18	A	00-185	26 IR 458	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-19-1	A	00-185	26 IR 458	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-3	A	00-185	26 IR 459	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-8	A	00-185	26 IR 460	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-11	A	00-185	26 IR 461	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-12	A	00-185	26 IR 462	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)

329 IAC 10-20-13	A	00-185	26 IR 463	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-14.1	A	01-288	26 IR 1662	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-20-20	A	00-185	26 IR 463	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-24	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-26	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-28	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-20-29	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-21-1	A	00-185	26 IR 465	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-2	A	00-185	26 IR 468	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-4	A	00-185	26 IR 474	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-6	A	00-185	26 IR 477	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-7	A	00-185	26 IR 479	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-8	A	00-185	26 IR 480	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-9	A	00-185	26 IR 481	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-10	A	00-185	26 IR 482	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-13	A	00-185	26 IR 484	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-15	A	00-185	26 IR 488	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-21-16	A	00-185	26 IR 488	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-22-2	A	00-185	26 IR 493	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-22-3	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-22-5	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-22-6	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-22-7	A	00-185	26 IR 495	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-22-8	A	00-185	26 IR 496	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-23-2	A	00-185	26 IR 496	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-23-3	A	00-185	26 IR 497	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-23-4	A	00-185	26 IR 498	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-24-4	A	00-185	26 IR 499	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208)
329 IAC 10-28-21	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)

329 IAC 10-28-24	A	01-288	26 IR 1664	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 10-29-1	A	00-185	26 IR 499	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 10-30-4	A	00-185	26 IR 500	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 10-36-19	A	01-288	26 IR 1665	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 10-37-4	A	00-185	26 IR 501	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 10-39-1	A	00-185	26 IR 501	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 10-39-2	A	00-185	26 IR 502	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 10-39-3	A	00-185	26 IR 508	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 10-39-7	A	00-185	26 IR 509	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 10-39-9	A	00-185	26 IR 509	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 10-39-10	A	00-185	26 IR 510	*CPH (26 IR 2392)
				*CPH (26 IR 3073)
				*CPH (26 IR 3366)
				*CPH (26 IR 3671)
				*CPH (27 IR 208)
329 IAC 11-2-19.5	N	01-288	26 IR 1665	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-2-39	A	01-288	26 IR 1666	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-2-44	R	01-288	26 IR 1674	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-3-2	A	01-288	26 IR 1666	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-6-1	R	01-288	26 IR 1674	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-7	R	01-288	26 IR 1674	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-8-2	A	01-288	26 IR 1666	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-8-2.5	N	01-288	26 IR 1666	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-8-3	A	01-288	26 IR 1667	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-9-6	N	01-288	26 IR 1667	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-13-4	A	01-288	26 IR 1667	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-13-6	A	01-288	26 IR 1668	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-15-1	A	01-288	26 IR 1668	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-19-2	A	01-288	26 IR 1669	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-19-3	A	01-288	26 IR 1670	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-20-1	A	01-288	26 IR 1670	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-4	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-5	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-6	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-7	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-8	A	01-288	26 IR 1672	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 12-8-4	A	01-288	26 IR 1672	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 13-3-1	A	01-288	26 IR 1673	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

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 1-3-22	A	03-9	26 IR 3108	**27 IR 490**
345 IAC 1-3-30	A	01-413	25 IR 2774	**26 IR 345**
	A	02-323	26 IR 3102	**27 IR 87**
345 IAC 1-3-31	N	02-323	26 IR 3104	**27 IR 89**
345 IAC 1-3-32	N	02-323	26 IR 3104	**27 IR 90**
345 IAC 1-5-1	A	03-9	26 IR 3108	**27 IR 491**

345 IAC 1-6-2	A	02-323	26 IR 3105	**27 IR 90**
345 IAC 1-6-3	A	02-323	26 IR 3105	**27 IR 90**
345 IAC 2-7-1	A	01-413	25 IR 2775	**26 IR 346**
345 IAC 2-7-2.4	N	02-323	26 IR 3106	**27 IR 92**
345 IAC 2-7-2.5	N	02-323	26 IR 3107	**27 IR 92**
345 IAC 2-7-3	A	01-413	25 IR 2776	**26 IR 347**
	A	02-323	26 IR 3107	**27 IR 92**
345 IAC 2-7-4	A	01-413	25 IR 2777	**26 IR 348**
345 IAC 2-7-5	A	01-413	25 IR 2778	**26 IR 349**
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	*ARR (25 IR 3770)
			25 IR 4167	**26 IR 694**
345 IAC 7-7-3.5	N	01-377	25 IR 1993	*ARR (25 IR 3770)
			25 IR 4168	**26 IR 695**
345 IAC 7-7-4	A	01-377	25 IR 1993	*ARR (25 IR 3770)
			25 IR 4168	**26 IR 695**
345 IAC 7-7-5	A	01-377	25 IR 1993	*ARR (25 IR 3770)
			25 IR 4168	**26 IR 696**
345 IAC 7-7-6	R	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 7-7-7	A	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 7-7-8	R	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 7-7-9	R	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 7-7-10	A	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**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	**26 IR 2859**
				*AROC (26 IR 3149)
357 IAC 1-11	N	02-332	26 IR 3109	*CPH (26 IR 3673)

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 1-8-2	A	03-164	26 IR 3929	
405 IAC 1-8-3	A	03-164	26 IR 3929	
405 IAC 1-10.5-2	A	03-164	26 IR 3930	
	A	03-236	27 IR 914	
405 IAC 1-10.5-3	A	03-18	26 IR 3378	*NRA (27 IR 207)
				27 IR 863
	A	03-164	26 IR 3932	
	A	03-236	27 IR 916	
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	*NRA (26 IR 3365) **26 IR 3869**
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	*NRA (26 IR 3365) **26 IR 3872**
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	*NRA (26 IR 3365) **26 IR 3873**
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	*NRA (26 IR 3365) **26 IR 3874**
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	*NRA (26 IR 3365) **26 IR 3875**
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	*NRA (26 IR 3365) **26 IR 3876**
405 IAC 1-16-2	A	02-214	26 IR 158	*NRA (2644) *AROC (26 IR 2695) **26 IR 3634**
405 IAC 1-16-4	A	02-214	26 IR 159	*NRA (2644) *AROC (26 IR 2695) **26 IR 3635**
405 IAC 1-17-1	A	03-61	26 IR 3111	*NRA (26 IR 3670) **27 IR 93**
405 IAC 1-17-2	A	03-61	26 IR 3111	*NRA (26 IR 3670) **27 IR 94**
405 IAC 1-17-3	A	03-61	26 IR 3112	*NRA (26 IR 3670) **27 IR 94**
405 IAC 1-17-4	A	03-61	26 IR 3113	*NRA (26 IR 3670) **27 IR 95**
405 IAC 1-17-5	A	03-61	26 IR 3113	*NRA (26 IR 3670) **27 IR 96**
405 IAC 1-17-6	A	03-61	26 IR 3114	*NRA (26 IR 3670) **27 IR 96**
405 IAC 1-17-7	A	03-61	26 IR 3114	*NRA (26 IR 3670) **27 IR 97**
405 IAC 1-17-9	A	03-61	26 IR 3115	*NRA (26 IR 3670) **27 IR 98**
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) **26 IR 2865**
405 IAC 1-20	N	02-184	26 IR 512	*NRA (26 IR 1960) **26 IR 2866**
405 IAC 1-21	N	03-184	27 IR 258	
405 IAC 2-3-1.1	A	03-205	27 IR 262	
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) **26 IR 2868**
405 IAC 2-3-21	A	02-234	26 IR 517	*NRA (26 IR 1960) **26 IR 2868**
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**
	A	03-134	26 IR 3706	
405 IAC 2-8-1.1	N	02-87	25 IR 2805	*NRA (26 IR 61) **26 IR 732**
	A	03-134	26 IR 3707	
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 2-10-3	A	03-134	26 IR 3707	
405 IAC 2-10-7	A	03-134	26 IR 3707	
405 IAC 2-10-7.1	N	03-134	26 IR 3707	
405 IAC 2-10-8	A	03-134	26 IR 3708	
405 IAC 2-10-9	A	03-134	26 IR 3708	
405 IAC 2-10-10	R	03-134	26 IR 3709	
405 IAC 2-10-11	N	03-134	26 IR 3709	
405 IAC 4-1	RA	02-275	26 IR 544	**26 IR 1261**
405 IAC 4-1-1				*ERR (26 IR 383)
405 IAC 5-3-13	A	03-66	26 IR 3381	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550)
405 IAC 5-12-1	A	02-49	25 IR 2555	*AROC (26 IR 884) *NRA (26 IR 1960) *ARR (26 IR 2625) *NRA (2644)
405 IAC 5-12-2	A	02-49	25 IR 2556	*AROC (26 IR 884) *NRA (26 IR 1960) *ARR (26 IR 2625) *NRA (2644) **26 IR 2861**
405 IAC 5-12-3	A	02-49	25 IR 2556	*AROC (26 IR 884) *NRA (26 IR 1960) *ARR (26 IR 2625) *NRA (2644) **26 IR 2861**
405 IAC 5-12-4	R	02-49	25 IR 2556	*AROC (26 IR 884) *NRA (26 IR 1960) *ARR (26 IR 2625) *NRA (2644)
405 IAC 5-12-5	R	02-49	25 IR 2556	*AROC (26 IR 884) *NRA (26 IR 1960) *ARR (26 IR 2625) *NRA (2644)

405 IAC 5-12-6	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)
				26 IR 2862
405 IAC 5-12-7	A	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)
				26 IR 2862
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)
				26 IR 2862
	A	02-277	26 IR 864	**26 IR 2862**
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)
				26 IR 2863
	A	02-277	26 IR 865	**26 IR 2863**
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)
				26 IR 2863
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)
				26 IR 2863
	A	02-277	26 IR 865	**26 IR 2863**
405 IAC 5-14-10	R	02-277	26 IR 866	**26 IR 2865**
405 IAC 5-14-11	A	02-277	26 IR 865	**26 IR 2864**
405 IAC 5-14-15	A	02-277	26 IR 865	**26 IR 2864**
405 IAC 5-14-16	A	02-277	26 IR 866	**26 IR 2864**
405 IAC 5-14-17	A	02-277	26 IR 866	**26 IR 2864**
405 IAC 5-14-18	A	02-277	26 IR 866	**26 IR 2864**
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	*NRA (26 IR 2644)
	A	03-207	27 IR 267	
405 IAC 5-20-1	A	03-184	27 IR 259	
405 IAC 5-20-2	A	03-184	27 IR 260	
405 IAC 5-20-3.1	N	03-184	27 IR 260	
405 IAC 5-20-4	A	03-184	27 IR 261	
405 IAC 5-20-7	A	03-184	27 IR 261	
405 IAC 5-21-1	A	03-66	26 IR 3381	*NRA (26 IR 3902)
				*ARR (27 IR 539)
				*NRA (27 IR 550)
405 IAC 5-21-7	A	03-66	26 IR 3382	*NRA (26 IR 3902)
				*ARR (27 IR 539)
				*NRA (27 IR 550)
405 IAC 5-21-8	N	03-66	26 IR 3382	*NRA (26 IR 3902)
				*ARR (27 IR 539)
				*NRA (27 IR 550)
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
	A	03-206	27 IR 266	
405 IAC 5-24-13	N	02-207	26 IR 515	*NRA (26 IR 2644)
				26 IR 3633
405 IAC 5-31-4	A	02-207	26 IR 515	*NRA (26 IR 2644)
				26 IR 3633
405 IAC 5-34-1	A	02-214	26 IR 159	*NRA (26 IR 2644)
				*AROC (26 IR 2695)
				26 IR 3635
405 IAC 5-34-2	A	02-214	26 IR 159	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3635
405 IAC 5-34-3	A	02-214	26 IR 160	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3636
405 IAC 5-34-4	A	02-214	26 IR 160	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3636
405 IAC 5-34-4.1	N	02-214	26 IR 162	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3638
405 IAC 5-34-4.2	N	02-214	26 IR 162	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3638
405 IAC 5-34-5	A	02-214	26 IR 162	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3638
405 IAC 5-34-6	A	02-214	26 IR 162	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3639
405 IAC 5-34-7	A	02-214	26 IR 163	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3640
405 IAC 6-2-3	A	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
	A	03-260	27 IR 919	
405 IAC 6-2-5	A	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
	A	03-260	27 IR 919	
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
	R	03-260	27 IR 921	
405 IAC 6-2-22	R	03-260	27 IR 921	
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
	A	03-260	27 IR 919	
405 IAC 6-4-2	A	01-373	25 IR 3815	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 699
	A	03-260	27 IR 919	
405 IAC 6-4-3	A	03-260	27 IR 920	
405 IAC 6-5-1	A	01-373	25 IR 3816	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 700
	A	03-260	27 IR 920	
405 IAC 6-5-2	A	01-373	25 IR 3816	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 700
	A	03-260	27 IR 920	
405 IAC 6-5-3	A	01-373	25 IR 3816	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 700
	A	03-260	27 IR 921	
405 IAC 6-5-4	A	01-373	25 IR 3816	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 701
	A	03-260	27 IR 921	
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
	A	03-260	27 IR 921	
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
	R	03-260	27 IR 921	
405 IAC 6-6-4	A	01-373	25 IR 3817	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 702
405 IAC 6-6-4	R	03-260	27 IR 921	
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)
				26 IR 2869

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 1-2.3-47	A	03-4	26 IR 3131	**27 IR 865**
410 IAC 1-2.3-48	A	03-4	26 IR 3134	**27 IR 869**
410 IAC 1-2.3-97.5	N	03-4	26 IR 3135	**27 IR 870**
410 IAC 3-3-7.1	A	03-19	26 IR 3385	*ARR (27 IR 539)
410 IAC 6-2	R	02-142	25 IR 4197	*CPH (26 IR 812)
				*AROC (26 IR 3149)
				26 IR 3334
410 IAC 6-2.1	N	02-142	25 IR 4188	*CPH (26 IR 812)
				*AROC (26 IR 3149)
				26 IR 3325
410 IAC 6-7.1				*ERR (26 IR 36)
410 IAC 6-7.2				*ERR (26 IR 36)
410 IAC 6-7.2-17	A	02-295	26 IR 2662	**27 IR 98**
410 IAC 6-7.2-29	A	02-295	26 IR 2662	**27 IR 99**
410 IAC 6-7.2-30	A	02-295	26 IR 2663	**27 IR 99**
410 IAC 6-8.1	R	02-321	26 IR 3131	*CPH (26 IR 3368)
410 IAC 6-8.2	N	02-321	26 IR 3116	*CPH (26 IR 3368)
410 IAC 6-9-3				*ERR (26 IR 3884)
410 IAC 6-10	R	02-321	26 IR 3131	*CPH (26 IR 3368)
410 IAC 7-19	R	02-317	26 IR 3385	*ARR (27 IR 878)
410 IAC 7-22	N	02-266	26 IR 1245	**26 IR 3334**
410 IAC 7-23	N	02-317	26 IR 3383	*ARR (27 IR 878)
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 16.2-3.1-19	A	03-90	27 IR 922	
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**
410 IAC 16.2-8-1	A	03-90	27 IR 924	

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	**26 IR 3640**

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)
				26 IR 2616
440 IAC 4.1-2-1	A	02-218	26 IR 519	*NRA (26 IR 2390)
				26 IR 2616
440 IAC 4.1-2-4	A	02-218	26 IR 520	*NRA (26 IR 2390)
				26 IR 2617
440 IAC 4.1-2-5	A	02-218	26 IR 521	*NRA (26 IR 2390)
				26 IR 2618
440 IAC 4.1-2-9	A	02-218	26 IR 521	*NRA (26 IR 2390)
				26 IR 2618
440 IAC 4.1-3	N	02-218	26 IR 522	*NRA (26 IR 2390)
				26 IR 2619
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 5.2	N	03-57	26 IR 3386	*NRA (26 IR 3902)
				27 IR 492
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	**26 IR 3337**

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 1-3-1	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-2	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-3	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-4	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-5	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-6	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-7	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-8	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-9	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-10	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-11	R	02-319		**††26 IR 3644**
460 IAC 1-3-12	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-13	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-14	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-15	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3.3	N	02-319	26 IR 2111	**26 IR 3643**
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 3.5	RA	02-237	26 IR 2694	**26 IR 2694**
460 IAC 3.5-1-1	A	03-180	27 IR 269	
460 IAC 3.5-2-1	A	03-180	27 IR 269	
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 6-2-2	A	03-123	26 IR 3935	
460 IAC 6-2-3	A	03-123	26 IR 3935	
460 IAC 6-3-2.1	N	02-326	26 IR 2664	**27 IR 101**

460 IAC 6-3-5.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-5.2	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-6.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-10.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-15.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-15.2	N	03-123	26 IR 3935	
460 IAC 6-3-15.3	N	02-326	26 IR 2665	~~††~~**27 IR 101**
460 IAC 6-3-18	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-25	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-29.5	N	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-31	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-32	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-38.5	N	02-326	26 IR 2666	**27 IR 103**
460 IAC 6-3-38.6	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-41.1	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-52.1	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-56	A	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-4-1	A	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-5-4	A	02-326	26 IR 2668	**27 IR 104**
460 IAC 6-5-7	A	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-21	A	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-32	N	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-33	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-34	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-35	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-36	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-6-2	A	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-6-3	A	02-326	26 IR 2670	**27 IR 107**
460 IAC 6-7-2	A	02-326	26 IR 2671	**27 IR 107**
460 IAC 6-7-3	A	02-326	26 IR 2671	**27 IR 108**
460 IAC 6-9-5	A	02-326	26 IR 2672	**27 IR 108**
460 IAC 6-9-7	N	02-326	26 IR 2673	**27 IR 109**
460 IAC 6-10-5	A	02-326	26 IR 2673	**27 IR 110**
460 IAC 6-10-8	A	02-326	26 IR 2674	**27 IR 110**
460 IAC 6-10-13	A	02-326	26 IR 2674	**27 IR 110**
460 IAC 6-13-2	A	02-326	26 IR 2675	**27 IR 111**
460 IAC 6-14-4	A	02-326	26 IR 2675	**27 IR 111**
460 IAC 6-14-6	N	03-123	26 IR 3935	
460 IAC 6-14-7	N	03-123	26 IR 3935	
460 IAC 6-15-2	A	03-123	26 IR 3935	
460 IAC 6-17-3	A	02-326	26 IR 2675	**27 IR 111**
460 IAC 6-17-4	A	02-326	26 IR 2676	**27 IR 112**
460 IAC 6-19-6	A	02-326	26 IR 2676	**27 IR 113**
	A	03-123	26 IR 3936	
460 IAC 6-24-1	A	02-236	26 IR 2677	**27 IR 113**
460 IAC 6-24-2	A	02-326	26 IR 2677	**27 IR 114**
460 IAC 6-25-10	A	02-326	26 IR 2677	**27 IR 114**
460 IAC 6-29-4	A	02-326	26 IR 2678	**27 IR 114**
460 IAC 6-29-9	N	02-326	26 IR 2678	**27 IR 115**
460 IAC 6-31-1	A	03-123	26 IR 3936	
460 IAC 6-35	N	02-326	26 IR 2678	**27 IR 115**
460 IAC 6-36	N	03-123	26 IR 3937	
460 IAC 7	N	02-210	26 IR 525	*ARR (26 IR 1110)
			26 IR 1247	*AROC (26 IR 2472)
				26 IR 2870
460 IAC 8	N	03-99	26 IR 3392	

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-4.1	R	02-298	26 IR 1719	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
				*AROC (27 IR 288)
				27 IR 162
470 IAC 3-4.2	R	02-298	26 IR 1719	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
				*AROC (27 IR 288)
				27 IR 162
470 IAC 3-4.7	N	02-298	26 IR 1675	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
				*AROC (27 IR 288)
				27 IR 116
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 6-2-1	A	03-136	26 IR 3709	*NRA (27 IR 207)
				27 IR 870
470 IAC 6-2-13	A	03-136	26 IR 3709	*NRA (27 IR 207)
				27 IR 871
470 IAC 6-4.1-4	A	03-136	26 IR 3710	*NRA (27 IR 207)
				27 IR 871
470 IAC 8.1-2-12	A	02-152	26 IR 530	
470 IAC 10.1-3-4	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.1-3-4.1	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.1-3-5	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.2	N	03-33	26 IR 2680	*NRA (26 IR 3670)
				27 IR 498
470 IAC 11.1-1-5	A	02-203	26 IR 169	*NRA (26 IR 1112)
				26 IR 2321

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 1-3-1	A	03-185	27 IR 270	
511 IAC 1-6-2	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 1-6-3	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 1-6-4	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 4-4-3	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 4-4-4	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-1	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-2	A	02-67	25 IR 2807	**26 IR 786**
511 IAC 5-1-3	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-3.5	A	02-67	25 IR 2807	**26 IR 787**
511 IAC 5-1-4	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-4.5	RA	03-56	26 IR 3147	**26 IR 3960**
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	**26 IR 3645**
511 IAC 5-2-4	A	02-170	25 IR 4205	**26 IR 3645**
511 IAC 5-3-1	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-3-2	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-7-2	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-7-4	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-7-6.1	A	03-150	26 IR 3938	
511 IAC 6-7-6.5	A	02-177	25 IR 4205	**26 IR 3646**
511 IAC 6-7-7	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-1	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-2	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-3	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-5	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-6	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6.1-1-2	A	03-219	27 IR 561	
511 IAC 6.1-1-11.5				*ERR (26 IR 36)
511 IAC 6.1-5-3.5	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6.1-5.1-5	A	02-177	25 IR 4206	**26 IR 3646**
	A	02-178	25 IR 4207	**26 IR 3647**
511 IAC 6.1-5.1-8	A	02-274	26 IR 1252	**26 IR 3648**
511 IAC 6.1-5.1-9	A	03-151	26 IR 3939	
511 IAC 6.1-5.1-10.1	A	03-151	26 IR 3940	
511 IAC 6.2-2.5	N	03-219	27 IR 563	
511 IAC 6.2-6-4	A	02-264	26 IR 1719	**27 IR 162**
511 IAC 6.2-6-6.1	N	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-6-8	A	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-6-12	A	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-7	N	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-7-8	A	03-219	27 IR 564	

TITLE 515 PROFESSIONAL STANDARDS BOARD

515 IAC 1-3	R	02-314	26 IR 1257	*ARR (26 IR 3346) **27 IR 505**
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	*ARR (26 IR 3346) **27 IR 501**
515 IAC 3				*ERR (26 IR 37)
515 IAC 4	N	03-135	27 IR 925	
515 IAC 5	N	02-80	25 IR 2808	**26 IR 2325**
515 IAC 8	N	03-10	26 IR 2437	**27 IR 166** *ERR (27 IR 538)
515 IAC 9	N	03-11	26 IR 2451	*CPH (26 IR 2648)
515 IAC 12	N	03-65	26 IR 3943	

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

540 IAC 1-1-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-5	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-8	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-10	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-15	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-18	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-3-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-4-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-4-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-7-2	A	02-287	26 IR 1257	*CPH (26 IR 1593) **26 IR 3338**
540 IAC 1-8-2	A	02-287	26 IR 1258	*CPH (26 IR 1593) **26 IR 3338**
540 IAC 1-8-8	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-9-2.6	R	02-287	26 IR 1258	*CPH (26 IR 1593) **26 IR 3338**
540 IAC 1-10-1	A	02-287	26 IR 1258	*CPH (26 IR 1593) **26 IR 3338**
540 IAC 1-10-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-11	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-3	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-4	RA	03-112	26 IR 3754	**27 IR 570**

TITLE 550 BOARD OF TRUSTEES OF THE INDIANA STATE TEACHERS' RETIREMENT FUND

550 IAC 2-2-7	A	03-155	26 IR 3944	*CPH (27 IR 551)
550 IAC 3-1-1	A	02-325	26 IR 2112	**26 IR 3877**
550 IAC 3-1-2	A	02-325	26 IR 2113	**26 IR 3878**
550 IAC 3-1-3	A	02-325	26 IR 2113	**26 IR 3878**
550 IAC 3-2-1	A	02-325	26 IR 2113	**26 IR 3878**
550 IAC 3-2-2	A	02-325	26 IR 2114	**26 IR 3879**
550 IAC 5	N	02-325	26 IR 2114	**26 IR 3879**
550 IAC 6	N	02-325	26 IR 2115	**26 IR 3880**
550 IAC 7	N	03-100	26 IR 3710	

TITLE 570 INDIANA COMMISSION ON PROPRIETARY EDUCATION

570 IAC 1-14	N	02-233	26 IR 867	**26 IR 3338**

TITLE 575 STATE SCHOOL BUS COMMITTEE

575 IAC 1-1-4.6	N	02-315	26 IR 1723	**26 IR 3341**

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	
610 IAC 4-6-13	R	03-253	27 IR 565	
610 IAC 4-6-23	A	03-252	27 IR 564	

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1				*ERR (26 IR 383)
655 IAC 1-1-5.1	A	03-186	27 IR 932	
655 IAC 1-2.1	RA	02-128	25 IR 3883	*CPH (26 IR 416) **26 IR 1262**
655 IAC 1-2.1-2	A	03-186	27 IR 934	
655 IAC 1-2.1-3	A	03-186	27 IR 934	
655 IAC 1-2.1-6.1	A	03-186	27 IR 935	
655 IAC 1-2.1-6.2	A	03-186	27 IR 935	
655 IAC 1-2.1-6.3	A	03-186	27 IR 935	
655 IAC 1-2.1-6.4	A	03-186	27 IR 936	
655 IAC 1-2.1-12	A	03-186	27 IR 936	
655 IAC 1-2.1-14	A	03-186	27 IR 936	
655 IAC 1-2.1-15	A	03-186	27 IR 936	
655 IAC 1-2.1-19	A	03-186	27 IR 937	
655 IAC 1-2.1-19.1	A	03-186	27 IR 937	
655 IAC 1-2.1-20	A	03-186	27 IR 937	
655 IAC 1-2.1-23	A	03-186	27 IR 938	
655 IAC 1-2.1-23.1	A	03-186	27 IR 938	
655 IAC 1-2.1-24	A	03-186	27 IR 938	
655 IAC 1-2.1-24.1	A	03-186	27 IR 938	
655 IAC 1-2.1-24.2	A	03-186	27 IR 938	
655 IAC 1-2.1-24.3	N	03-186	27 IR 939	
655 IAC 1-2.1-88	A	03-186	27 IR 939	
655 IAC 1-3				*ERR (26 IR 383)
655 IAC 1-3-1	A	03-186	27 IR 939	
655 IAC 1-3-2	A	03-186	27 IR 939	
655 IAC 1-3-4	A	03-186	27 IR 940	
655 IAC 1-3-5	A	03-186	27 IR 940	
655 IAC 1-3-7	A	03-186	27 IR 940	
655 IAC 1-3-8	R	03-186	27 IR 941	
655 IAC 1-4				*ERR (26 IR 383)
655 IAC 1-4-1	A	03-186	27 IR 940	
655 IAC 1-4-2	A	03-186	27 IR 940	

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 12-4-11	A	03-278	27 IR 941	
675 IAC 13-1-4	RA	03-48	26 IR 2693	*CPH (27 IR 551)
675 IAC 13-1-5	RA	03-48	26 IR 2693	*CPH (27 IR 551)
675 IAC 13-1-8	A	02-51	25 IR 2561	**26 IR 1095**
675 IAC 13-1-9.5	RA	03-48	26 IR 2693	*CPH (27 IR 551)
675 IAC 13-1-9.6	RA	03-48	26 IR 2693	*CPH (27 IR 551)
675 IAC 13-1-10	A	02-51	25 IR 2564	**26 IR 1098**
675 IAC 13-1-28	RA	03-48	26 IR 2693	*CPH (27 IR 551)
675 IAC 13-2.3	R	02-115	25 IR 3366	*ARR (26 IR 2376) **26 IR 2951**
675 IAC 13-2.4	N	02-115	25 IR 3291	*ARR (26 IR 2376) **26 IR 2875**
675 IAC 14-4.2-1	A	03-71	26 IR 3712	
675 IAC 14-4.2-2	A	03-71	26 IR 3712	
675 IAC 14-4.2-3	A	03-71	26 IR 3714	
675 IAC 14-4.2-6	A	03-71	26 IR 3715	
675 IAC 14-4.2-7	A	03-71	26 IR 3719	
675 IAC 14-4.2-9	A	03-71	26 IR 3719	
675 IAC 14-4.2-13.5	N	03-71	26 IR 3719	
675 IAC 14-4.2-15.5	N	03-71	26 IR 3719	
675 IAC 14-4.2-19.5	N	03-71	26 IR 3720	
675 IAC 14-4.2-20.5	A	03-71	26 IR 3720	
675 IAC 14-4.2-21	A	03-71	26 IR 3720	
675 IAC 14-4.2-22	A	03-71	26 IR 3721	

675 IAC 14-4.2-26.5	N	03-71	26 IR 3722	
675 IAC 14-4.2-27.5	A	03-71	26 IR 3722	
675 IAC 14-4.2-29	A	03-71	26 IR 3722	
675 IAC 14-4.2-31	A	03-71	26 IR 3722	
675 IAC 14-4.2-34	A	03-71	26 IR 3723	
675 IAC 14-4.2-37.5	N	03-71	26 IR 3724	
675 IAC 14-4.2-45.3	N	03-71	26 IR 3724	
675 IAC 14-4.2-46.8	N	03-71	26 IR 3724	
675 IAC 14-4.2-49.1	N	03-71	26 IR 3724	
675 IAC 14-4.2-49.3	N	03-71	26 IR 3724	
675 IAC 14-4.2-52	A	03-71	26 IR 3725	
675 IAC 14-4.2-53	A	03-71	26 IR 3725	
675 IAC 14-4.2-53.7	N	03-71	26 IR 3725	
675 IAC 14-4.2-61	A	03-71	26 IR 3726	
675 IAC 14-4.2-63	A	03-71	26 IR 3726	
675 IAC 14-4.2-69.5	N	03-71	26 IR 3726	
675 IAC 14-4.2-71	A	03-71	26 IR 3726	
675 IAC 14-4.2-73.5	N	03-71	26 IR 3727	
675 IAC 14-4.2-77.6	N	03-71	26 IR 3727	
675 IAC 14-4.2-77.7	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.2	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.3	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.7	N	03-71	26 IR 3727	
675 IAC 14-4.2-82	A	03-71	26 IR 3727	
675 IAC 14-4.2-83	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.2	N	03-71	26 IR 3728	
675 IAC 14-4.2-89.6	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.7	R	03-71	26 IR 3737	
675 IAC 14-4.2-89.8	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.9	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.10	R	03-71	26 IR 3737	
675 IAC 14-4.2-89.11	R	03-71	26 IR 3737	
675 IAC 14-4.2-95	A	03-71	26 IR 3729	
675 IAC 14-4.2-96.2	N	03-71	26 IR 3729	
675 IAC 14-4.2-97.5	N	03-71	26 IR 3729	
675 IAC 14-4.2-97.9	N	03-71	26 IR 3729	
675 IAC 14-4.2-107	A	03-71	26 IR 3729	
675 IAC 14-4.2-112.5	N	03-71	26 IR 3735	
675 IAC 14-4.2-117	A	03-71	26 IR 3736	
675 IAC 14-4.2-171.5	N	03-71	26 IR 3736	
675 IAC 14-4.2-174.5	N	03-71	26 IR 3736	
675 IAC 14-4.2-177.5	N	03-71	26 IR 3736	
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 14-4.2-189	A	03-71	26 IR 3736	
675 IAC 14-4.2-189.2	N	03-71	26 IR 3736	
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**
	A	03-71	26 IR 3736	
675 IAC 14-4.2-191.5	N	01-376		††**26 IR 13**
675 IAC 14-4.2-192	R	03-71	26 IR 3737	
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 17-1.6-12	A	03-71	26 IR 3737	
675 IAC 17-1.6-16	A	03-71	26 IR 3737	
675 IAC 18-1.3	R	02-116	25 IR 3381	*ARR (26 IR 2376) **26 IR 2967**
675 IAC 18-1.4	N	02-116	25 IR 3366	*ARR (26 IR 2376) **26 IR 2952**
675 IAC 19-3-4	A	03-71	26 IR 3737	
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) **26 IR 3031**
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) **26 IR 2968**
675 IAC 25	N	02-118	25 IR 3444	*ARR (26 IR 2376) **26 IR 3032**

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** *ERR (26 IR 3345)
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	*AROC (26 IR 3427)
760 IAC 1-21-5	A	02-299	26 IR 1724	*AROC (26 IR 3427)
760 IAC 1-21-8	A	02-299	26 IR 1724	*AROC (26 IR 3427)
760 IAC 1-50-2	A	03-160	27 IR 271	
760 IAC 1-50-3	A	03-160	27 IR 271	
760 IAC 1-50-4	A	03-160	27 IR 272	
760 IAC 1-50-5	A	03-160	27 IR 272	
760 IAC 1-50-7	A	03-160	27 IR 273	
760 IAC 1-50-13	A	03-160	27 IR 273	
760 IAC 1-50-13.5	A	03-160	27 IR 273	
760 IAC 1-57-1	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-2	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-3	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-4	A	03-7	26 IR 3399	**27 IR 506**
760 IAC 1-57-5	A	03-7	26 IR 3399	**27 IR 506**
760 IAC 1-57-6	A	03-7	26 IR 3400	**27 IR 507**
760 IAC 1-57-7	R	03-7	26 IR 3408	**27 IR 515**
760 IAC 1-57-8	A	03-7	26 IR 3401	**27 IR 508**
760 IAC 1-57-9	A	03-7	26 IR 3405	**27 IR 512**
760 IAC 1-57-10	A	03-7	26 IR 3407	**27 IR 514**
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) **26 IR 3035**
760 IAC 1-69	N	03-8	26 IR 3945	**27 IR 872**

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 1.1-1-1	A	03-20	26 IR 3136	**27 IR 180**
804 IAC 1.1-3-1	A	02-20	25 IR 3446	**26 IR 370** *ERR (26 IR 793)
804 IAC 1.1-3-2	RA	03-43	26 IR 3148	**26 IR 3960**

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	**26 IR 3648**

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-1-11	A	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 515**
820 IAC 4-4-5				*ERR (26 IR 1109)
820 IAC 4-4-14				*ERR (26 IR 1109)
820 IAC 6-1-3	A	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 516**
820 IAC 6-2-1				*ERR (26 IR 1109)
820 IAC 6-3	N	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 516**

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 1-1-3	A	03-73	26 IR 3408	*CPH (26 IR 3904)
828 IAC 1-1-6	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-1-7	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-1-12	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-2-3	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-2-6	A	03-73	26 IR 3410	*CPH (26 IR 3904)
828 IAC 1-2-7	A	03-73	26 IR 3410	*CPH (26 IR 3904)
828 IAC 1-2-12	A	03-73	26 IR 3410	*CPH (26 IR 3904)
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 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-2-1	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-2	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-3	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-4	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-5	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-3	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-4	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-5	RA	03-55	26 IR 3755	**27 IR 946**

TITLE 832 STATE BOARD OF FUNERAL AND CEMETERY SERVICE

832 IAC 2-1-2	A	02-147	26 IR 870	**26 IR 2622**

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** *ERR (26 IR 2624)
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 4-7.1	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	**26 IR 2622**
839 IAC 1-2-5	A	02-271	26 IR 875	**26 IR 2623**
839 IAC 1-3-2	A	02-270	26 IR 871	*ARR (26 IR 1945) 26 IR 3411 **27 IR 517**
839 IAC 1-4-5	A	02-270	26 IR 871	*ARR (26 IR 1945) 26 IR 3411 **27 IR 518**
839 IAC 1-5-1	A	02-270	26 IR 872	*ARR (26 IR 1945) 26 IR 3412 **27 IR 518**
839 IAC 1-5-1.5	N	02-270	26 IR 874	*ARR (26 IR 1945) 26 IR 3414 **27 IR 520**

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

840 IAC 1-1-4	A	02-219	26 IR 540	**26 IR 1943**
840 IAC 1-1-6	A	03-189	27 IR 566	
840 IAC 1-2-1	A	03-190	27 IR 566	

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	**27 IR 521**
844 IAC 5-1-3	A	02-268	26 IR 2118	**27 IR 522**
844 IAC 5-3	N	02-268	26 IR 2118	**27 IR 522**
844 IAC 5-4	N	02-268	26 IR 2120	**27 IR 524** *ERR (27 IR 538)
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 1-3-1	A	03-46	26 IR 2683	**27 IR 526**
845 IAC 1-3-2	A	03-46	26 IR 2683	**27 IR 526**
845 IAC 1-3-3	N	03-46	26 IR 2684	**27 IR 527**
845 IAC 1-4.1-1	A	03-46	26 IR 2684	**27 IR 527**
845 IAC 1-4.1-2	A	03-46	26 IR 2684	**27 IR 527**
845 IAC 1-4.1-4	R	03-46	26 IR 2686	**27 IR 528**
845 IAC 1-4.1-7	A	03-46	26 IR 2685	**27 IR 527**
845 IAC 1-5-1	A	03-46	26 IR 2685	**27 IR 527**
845 IAC 1-5-2	R	01-363	25 IR 3456	*I (26 IR 1104)
	R	02-341	26 IR 2682	**27 IR 525**
845 IAC 1-5-2.1	N	01-363	25 IR 3455	*I (26 IR 1104)
	N	02-341	26 IR 2682	**27 IR 525**
845 IAC 1-5-3	A	03-46	26 IR 2685	**27 IR 528**
845 IAC 1-6-8	R	03-47	26 IR 2686	**27 IR 529**
845 IAC 1-6-9	N	03-47	26 IR 2686	**27 IR 529**

TITLE 848 INDIANA STATE BOARD OF NURSING

848 IAC 1-1-2.1	A	02-247	26 IR 2124	**26 IR 3652**
848 IAC 1-1-6	A	02-247	26 IR 2124	**26 IR 3653**
848 IAC 1-1-7	A	02-247	26 IR 2125	**26 IR 3654**
848 IAC 1-1-14	A	02-239	26 IR 2123	**26 IR 3651**
848 IAC 5-1-1	A	03-34	26 IR 3947	
848 IAC 5-1-3	A	03-34	26 IR 3948	
848 IAC 6	N	02-183	26 IR 2121	**26 IR 3649**

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 1-27-1	A	03-191	27 IR 276	
856 IAC 1-33-1	A	03-154	26 IR 3949	
	A	03-154	27 IR 274	
856 IAC 1-33-1.5	N	03-154	27 IR 274	
856 IAC 1-33-2	A	03-154	26 IR 3949	
	A	03-154	27 IR 275	
856 IAC 1-33-4	A	03-154	26 IR 3950	
	A	03-154	27 IR 275	
856 IAC 1-33-5	N	03-154	27 IR 275	
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**
856 IAC 2-7	N	02-258	26 IR 1725	**27 IR 181**

TITLE 857 INDIANA OPTOMETRIC LEGEND DRUG PRESCRIPTION ADVISORY COMMITTEE

857 IAC 1-4-1	RA	02-78	25 IR 3883	**26 IR 546**
857 IAC 2-3-16	A	02-123	25 IR 3873	**26 IR 1104**

TITLE 860 INDIANA PLUMBING COMMISSION

860 IAC 1-1-2.1				*ERR (26 IR 1109)

TITLE 862 PRIVATE DETECTIVES LICENSING BOARD

862 IAC 1-1-6	A	02-302	26 IR 1728	**26 IR 3341**

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

864 IAC 1.1-2-2	A	01-405	25 IR 2848	**26 IR 379**
	A	03-125	26 IR 3737	**27 IR 874**
864 IAC 1.1-2-4	A	01-405	25 IR 2849	**26 IR 380**
864 IAC 1.1-12-1	A	01-405	25 IR 2850	**26 IR 380**
864 IAC 1.1-14	N	03-125	26 IR 3739	**27 IR 875**

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

865 IAC 1-4-8	A	02-56	25 IR 3456	**26 IR 1105**
865 IAC 1-7-3	A	03-22	26 IR 3950	
865 IAC 1-10-23	R	03-22	26 IR 3958	
865 IAC 1-10-24	R	03-22	26 IR 3958	
865 IAC 1-12-2	A	03-22	26 IR 3951	
865 IAC 1-12-3	A	03-22	26 IR 3952	
865 IAC 1-12-5	A	03-22	26 IR 3952	
865 IAC 1-12-6	A	03-22	26 IR 3953	
865 IAC 1-12-7	A	03-22	26 IR 3953	
865 IAC 1-12-9	A	03-22	26 IR 3954	
865 IAC 1-12-10	A	03-22	26 IR 3954	
865 IAC 1-12-11	A	03-22	26 IR 3954	
865 IAC 1-12-12	A	03-22	26 IR 3954	
865 IAC 1-12-13	A	03-22	26 IR 3955	
865 IAC 1-12-14	A	03-22	26 IR 3956	
865 IAC 1-12-18	A	03-22	26 IR 3956	
865 IAC 1-12-28	A	02-56	25 IR 3456	**26 IR 1105**
865 IAC 1-13-4	A	03-41	26 IR 3739	**27 IR 875**
865 IAC 1-13-5	A	03-187	27 IR 943	
865 IAC 1-13-7	A	03-41	26 IR 3739	**27 IR 875**
865 IAC 1-13-20	R	03-41	26 IR 3740	**27 IR 876**
865 IAC 1-14-13	A	03-41	26 IR 3740	**27 IR 876**
865 IAC 1-14-14	A	03-41	26 IR 3740	**27 IR 876**
865 IAC 1-14-15	A	03-41	26 IR 3740	**27 IR 876**
865 IAC 1-14-20	R	03-41	26 IR 3740	**27 IR 876**

TITLE 868 STATE PSYCHOLOGY BOARD

868 IAC 2	N	03-60	26 IR 3741	*CPH (27 IR 905)

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

872 IAC 1-1-2	A	03-126	27 IR 277	
872 IAC 1-1-6.1	A	02-213	26 IR 2465	*AROC (26 IR 3150) *ARR (26 IR 3656) **26 IR 3881**
872 IAC 1-1-6.2	A	03-126	27 IR 277	
872 IAC 1-1-6.4	A	03-126	27 IR 277	
872 IAC 1-1-6.5	A	03-126	27 IR 278	
872 IAC 1-1-6.6	A	03-126	27 IR 278	
872 IAC 1-1-8	A	03-126	27 IR 278	
872 IAC 1-1-8.3	A	03-126	27 IR 279	
872 IAC 1-1-9	A	03-126	27 IR 279	
872 IAC 1-1-9.5	A	03-126	27 IR 279	
872 IAC 1-1-10	A	02-301	26 IR 2126	**26 IR 3654**
	A	03-126	27 IR 279	
872 IAC 1-1-12	A	02-213	26 IR 2466	*AROC (26 IR 3150) *ARR (26 IR 3656) **26 IR 3882**
	A	03-126	27 IR 280	
872 IAC 1-1-14	A	03-126	27 IR 280	
872 IAC 1-1-17	R	03-126	27 IR 282	
872 IAC 1-1-19	A	03-126	27 IR 281	
872 IAC 1-1-22	R	03-126	27 IR 282	
872 IAC 1-1-23	R	03-126	27 IR 282	
872 IAC 1-1-25	A	03-126	27 IR 282	
872 IAC 1-3-14	A	02-213	26 IR 2466	*AROC (26 IR 3150) *ARR (26 IR 3656) **26 IR 3882**
872 IAC 1-4	N	02-301	26 IR 2127	**26 IR 3655**
872 IAC 1-5	N	02-213	26 IR 2467	*AROC (26 IR 3150) *ARR (26 IR 3656) **26 IR 3883**

TITLE 876 INDIANA REAL ESTATE COMMISSION

876 IAC 1-1-19	A	03-124	26 IR 3744	**27 IR 877**
876 IAC 1-1-23	A	01-427	25 IR 3874	**26 IR 789**
876 IAC 1-1-30.1	N	02-244	26 IR 2127	**26 IR 3342**
876 IAC 1-4-1	A	03-42	26 IR 3142	**27 IR 186**
876 IAC 1-4-2	A	01-427	25 IR 3874	**26 IR 789**
	A	03-42	26 IR 3142	**27 IR 186**
876 IAC 2-16-1	A	02-244	26 IR 2127	**26 IR 3342**
876 IAC 3-2-4	A	02-148	25 IR 4213	**26 IR 1106**
876 IAC 3-2-5	A	02-148	25 IR 4213	**26 IR 1107**
876 IAC 3-2-7	A	02-148	25 IR 4213	**26 IR 1107**
876 IAC 3-3-3	A	03-23	26 IR 3415	**27 IR 530**
876 IAC 3-3-4	A	03-23	26 IR 3416	**27 IR 531**
876 IAC 3-3-5	A	03-23	26 IR 3417	**27 IR 532**
876 IAC 3-3-6				*ERR (26 IR 1109)
876 IAC 3-3-21				*ERR (26 IR 1109)
876 IAC 3-3-22	A	02-148	25 IR 4214	**26 IR 1107**
876 IAC 3-4-8	A	03-23	26 IR 3418	**27 IR 533**
				*ERR (27 IR 538)
876 IAC 3-5-1	A	02-245	26 IR 3139	**27 IR 184**
876 IAC 3-5-1.5	A	02-245	26 IR 3140	**27 IR 185**
876 IAC 3-5-6.1	N	03-23	26 IR 3418	**27 IR 533**
876 IAC 3-5-7	A	02-245	26 IR 3141	**27 IR 185**
876 IAC 3-6-2	A	02-246	26 IR 1728	**26 IR 3043**
876 IAC 3-6-3	A	02-246	26 IR 1729	**26 IR 3044**
876 IAC 3-6-4	A	02-245	26 IR 3141	**27 IR 186**
876 IAC 3-6-9	A	02-148	25 IR 4214	**26 IR 1108**
	A	03-196	27 IR 282	
876 IAC 4-1-3	A	01-427	25 IR 3876	**26 IR 791**
876 IAC 4-2-2	A	01-369	26 IR 180	**26 IR 788**
876 IAC 4-2-3	A	01-369	26 IR 180	**26 IR 788**
876 IAC 4-2-3.5	N	02-300	26 IR 1730	**26 IR 3342**
876 IAC 4-2-9	A	01-369	26 IR 180	**26 IR 788**

TITLE 880 SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD

880 IAC 1-2	R	02-269	26 IR 879	*AWR (26 IR 2377)
	R	03-53	26 IR 3422	**27 IR 537**
880 IAC 1-2.1	N	02-269	26 IR 876	*AWR (26 IR 2377)
	N	03-53	26 IR 3419	**27 IR 534**

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

888 IAC 1.1-6-1	A	02-134	25 IR 3877	**26 IR 1563**
888 IAC 1.1-6-3	A	02-135	25 IR 3878	
888 IAC 1.1-10-1	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-2	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-3	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-4	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-11	N	02-136	25 IR 3879	**26 IR 1563**

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

905 IAC 1-5.2-9	R	03-38	26 IR 2688	
905 IAC 1-5.2-9.1	N	03-38	26 IR 2687	
905 IAC 1-5.2-9.2	N	03-38	26 IR 2687	
905 IAC 1-11.1-1	A	03-39	26 IR 2688	
905 IAC 1-11.1-2	A	03-39	26 IR 2688	
905 IAC 1-13-3	A	03-40	26 IR 2689	
905 IAC 1-13-6	N	03-40	26 IR 2689	
905 IAC 1-15.2-3	A	03-94	26 IR 3745	
905 IAC 1-35.1	N	03-96	26 IR 3745	
905 IAC 1-36-2	A	03-97	26 IR 3747	
905 IAC 1-39	RA	02-272	26 IR 545	**26 IR 1735**
905 IAC 1-40	RA	02-272	26 IR 545	**26 IR 1735**
905 IAC 1-41	RA	02-272	26 IR 545	**26 IR 1735**
905 IAC 1-45	N	02-338	26 IR 2128	*ERR (26 IR 2375)
				27 IR 189

NONCODE RULES

Animal Health, Indiana State Board of			
	N	03-120	*ETR (26 IR 3363)
	N	03-158	*ETR (26 IR 3364)
	N	03-208	*ETR (26 IR 3899)
	N	03-209	*ETR (26 IR 3900)
Education Savings Authority, Indiana			
	N	02-256	*ETR (26 IR 59)
	N	02-307	*ETR (26 IR 808)
Family and Social Services, Office of the Secretary of			
	N	02-278	*ETR (26 IR 396)
	N	02-279	*ETR (26 IR 396)
	N	02-280	*ETR (26 IR 406)
	N	02-281	*ETR (26 IR 407)
	A	03-181	*ETR (26 IR 3664)
	A	03-182	*ETR (26 IR 3667)
	N	03-265	*ETR (27 IR 544)
	N	03-266	*ETR (27 IR 546)
Gaming Commission, Indiana			
	N	03-210	*ETR (26 IR 3891)
Health, Indiana State Department of			
	N	03-1	*ETR (26 IR 1954)
	N	03-2	*ETR (26 IR 1956)
	N	03-86	*ETR (26 IR 2638)
	N	03-87	*ETR (26 IR 2642)
Horse Racing Commission, Indiana			
	R	02-296	*ETR (26 IR 395)
Local Government Finance, Department of			
	N	03-178	*ETR (26 IR 3658)
	N	03-268	*ETR (27 IR 541)
Lottery Commission, State			
	N	02-257	*ETR (26 IR 54)
	N	02-283	*ETR (26 IR 385)
	N	02-284	*ETR (26 IR 385)
	N	02-285	*ETR (26 IR 386)
	N	02-286	*ETR (26 IR 387)
	N	02-288	*ETR (26 IR 388)
	N	02-289	*ETR (26 IR 389)
	N	02-290	*ETR (26 IR 390)
			*ERR (26 IR 793)
	N	02-291	*ETR (26 IR 392)
	N	02-308	*ETR (26 IR 800)
	N	02-309	*ETR (26 IR 801)
	N	02-310	*ETR (26 IR 803)
	N	02-311	*ETR (26 IR 804)
	N	02-312	*ETR (26 IR 805)
	N	02-313	*ETR (26 IR 807)
	N	02-346	*ETR (26 IR 1574)
	N	02-347	*ETR (26 IR 1575)
	N	02-348	*ETR (26 IR 1577)
	N	02-349	*ETR (26 IR 1578)
	N	02-351	*ETR (26 IR 1582)
	N	02-352	*ETR (26 IR 1583)
	N	02-354	*ETR (26 IR 1587)
	N	02-355	*ETR (26 IR 1587)
	N	02-356	*ETR (26 IR 1588)
	N	02-357	*ETR (26 IR 1589)
	N	02-358	*ETR (26 IR 1590)
	N	03-15	*ETR (26 IR 1946)
	N	03-16	*ETR (26 IR 1948)
	N	03-49	*ETR (26 IR 2378)
	N	03-78	*ETR (26 IR 2628)
	N	03-79	*ETR (26 IR 2629)
	N	03-80	*ETR (26 IR 2630)
	N	03-81	*ETR (26 IR 2632)
	N	03-82	*ETR (26 IR 2634)
	N	03-83	*ETR (26 IR 2635)
	N	03-84	*ETR (26 IR 2636)
	N	03-105	*ETR (26 IR 3049)

N	03-106	*ETR (26 IR 3049)
N	03-107	*ETR (26 IR 3050)
N	03-108	*ETR (26 IR 3051)
N	03-109	*ETR (26 IR 3052)
N	03-110	*ETR (26 IR 3054)
N	03-111	*ETR (26 IR 3056)
N	03-114	*ETR (26 IR 3057)
N	03-115	*ETR (26 IR 3058)
N	03-116	*ETR (26 IR 3060)
N	03-117	*ETR (26 IR 3061)
N	03-118	*ETR (26 IR 3063)
N	03-119	*ETR (26 IR 3065)
N	03-137	*ETR (26 IR 3350)
N	03-138	*ETR (26 IR 3351)
N	03-139	*ETR (26 IR 3351)
N	03-140	*ETR (26 IR 3352)
N	03-141	*ETR (26 IR 3353)
N	03-142	*ETR (26 IR 3354)
N	03-143	*ETR (26 IR 3354)
N	03-144	*ETR (26 IR 3355)
N	03-145	*ETR (26 IR 3357)
N	03-147	*ETR (26 IR 3358)
N	03-197	*ETR (26 IR 3886)
N	03-198	*ETR (26 IR 3887)
N	03-199	*ETR (26 IR 3888)
N	03-200	*ETR (26 IR 3889)
N	03-238	*ETR (27 IR 193)
N	03-239	*ETR (27 IR 194)
N	03-240	*ETR (27 IR 196)
N	03-241	*ETR (27 IR 198)
N	03-248	*ETR (27 IR 203)
N	03-249	*ETR (27 IR 204)
N	03-287	*ETR (27 IR 884)
N	03-288	*ETR (27 IR 885)
N	03-289	*ETR (27 IR 886)
N	03-290	*ETR (27 IR 888)
N	03-291	*ETR (27 IR 889)
N	03-295	*ETR (27 IR 894)
Natural Resources Commission		
N	02-293	*ETR (26 IR 395)
N	02-330	*ETR (26 IR 1111)
N	03-26	*ETR (26 IR 1952)
N	03-27	*ETR (26 IR 1954)
N	03-28	*ETR (26 IR 2388)
N	03-51	*ETR (26 IR 2389)
N	03-85	*ETR (26 IR 2637)
N	03-88	*ETR (26 IR 2638)
N	03-176	*ETR (26 IR 3660)
N	03-177	*ETR (26 IR 3660)
N	03-211	*ETR (26 IR 3892)
N	03-217	*ETR (27 IR 206)
N	03-242	*ETR (27 IR 544)
N	03-243	*ETR (27 IR 544)
Revenue, Department of State		
N	02-316	*ETR (26 IR 794)
A	03-304	*ETR (27 IR 879)
Utility Regulatory Commission, Indiana		
A	03-192	*ETR (26 IR 3659)
N	03-267	*ETR (27 IR 543)
Water Pollution Control Board		
N	03-127	*ETR (26 IR 3066)
A	03-223	*ETR (26 IR 3892)
A	03-299	*ETR (27 IR 897)

*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

Index

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Index

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