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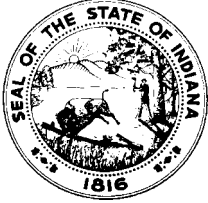
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June 10, 2004

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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) 2004 Indiana Administrative Code (CD-ROM version).
- (2) Volume 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 2003 Edition of the Indiana Administrative Code 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:
June 10, 2004	July 1, 2004	January 10, 2005	February 1, 2005
July 9, 2004	August 1, 2004	February 10, 2005	March 1, 2005
August 10, 2004	September 1, 2004	March 10, 2005	April 1, 2005
September 10, 2004	October 1, 2004	April 11, 2005	May 1, 2005
October 12, 2004	November 1, 2004	May 10, 2005	June 1, 2005
November 10, 2004	December 1, 2004	June 10, 2005	July 1, 2005
December 10, 2004	January 1, 2005	July 11, 2005	August 1, 2005

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		TITLE NUMBER	
AGENCY	TITLE NUMBER	AGENCY	TITLE NUMBER
Accountancy, Indiana Board of	872	†Industrial Board of Indiana	630
Accounts, State Board of	20	Information Technology Oversight Commission, State	28
Adjutant General	270	Insurance, Department of	760
Administration, Indiana Department of	25	Labor, Department of	610
†Administrative Building Council of Indiana	660	Land Surveyors, State Board of Registration for	865
†Aeronautics Commission of Indiana	110	Law Enforcement Training Board	250
†Aging and Community Services, Department on	450	Library and Historical Board, Indiana	590
Agricultural Development Corporation, Indiana	770	Library Certification Board	595
Agricultural Experiment Station	350	Local Government Finance, Department of	50
†Agriculture, Commissioner of	340	Lottery Commission, State	65
Agriculture, Commissioner of	375	Medical and Nursing Distribution Loan Fund Board of Trustees, Indiana	580
†Air Pollution Control Board	325.1	Medical Licensing Board of Indiana	844
Air Pollution Control Board	326	Mental Health and Addiction, Division of	440
†Air Pollution Control Board of the State of Indiana	325	Meridian Street Preservation Commission	925
Alcohol and Tobacco Commission	905	Motor Vehicles, Bureau of	140
Amusement Device Safety Board, Regulated	685	†Natural Resources, Department of	310
Animal Health, Indiana State Board of	345	Natural Resources Commission	312
Architects and Landscape Architects, Board of Registration for	804	Nursing, Indiana State Board of	848
Athletic Trainers Board, Indiana	898	Occupational Safety Standards Commission	620
Attorney General for the State, Office of	10	Optometric Legend Drug Prescription Advisory Committee, Indiana	857
Auctioneer Commission, Indiana	812	Optometry Board, Indiana	852
Barber Examiners, Board of	816	Parole Board	220
Boiler and Pressure Vessel Rules Board	680	†Personnel Board, State	30
Boxing Commission, State	808	Personnel Department, State	31
Budget Agency	85	Pesticide Review Board, Indiana	357
Chemist of the State of Indiana, State	355	Pharmacy, Indiana Board of	856
Children's Health Insurance Program, Office of the	407	Plumbing Commission, Indiana	860
Chiropractic Examiners, Board of	846	Podiatric Medicine, Board of	845
Civil Rights Commission	910	Police Department, State	240
†Clemency Commission, Indiana	230	Political Subdivision Risk Management Commission, Indiana	762
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Community Residential Facilities Council	431	Private Detectives Licensing Board	862
Consumer Protection Division of the Office of the Attorney General	11	Professional Standards Board	515
Controlled Substances Advisory Committee	858	Proprietary Education, Indiana Commission on	570
Coroners Training Board	207	Psychology Board, State	868
Correction, Department of	210	Public Access Counselor, Office of the	62
Cosmetology Examiners, State Board of	820	Public Employees' Retirement Fund, Board of Trustees of the	35
Creamery Examining Board	365	Public Records, Oversight Committee on	60
Criminal Justice Institute, Indiana	205	Public Safety Training Institute	280
Deaf Board, Indiana School for the	514	Real Estate Commission, Indiana	876
Dentistry, State Board of	828	Reciprocity Commission of Indiana	145
Developmental Disabilities Residential Facilities Council	430	Revenue, Department of State	45
Dietitians Certification Board, Indiana	830	Safety Review, Board of	615
Disability, Aging, and Rehabilitative Services, Division of	460	School Bus Committee, State	575
†Education, Commission on General	510	Secretary of State	75
Education, Indiana State Board of	511	Securities Division	710
Education Employment Relations Board, Indiana	560	Seed Commissioner, State	360
Education Savings Authority, Indiana	540	Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board	839
Egg Board, State	370	†Soil and Water Conservation Committee, State	311
†Election Board, State	15	Soil Scientists, Indiana Board of Registration for	307
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†Elevator Safety Board	670	Solid Waste Management Board	329
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†Employment and Training Services, Department of	645	Student Assistance Commission, State	585
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Environmental Health Specialists, Board of	896	Television and Radio Service Examiners, Board of	884
†Environmental Management Board, Indiana	320	†Textbook Adoptions, Commission on	520
Ethics Commission, State	40	Toxicology, State Department of	260
Fair Commission, State	80	†Traffic Safety, Office of	150
Family and Children, Division of	470	†Transportation, Department of	100
Family and Social Services, Office of the Secretary of	405	Transportation, Indiana Department of	105
Financial Institutions, Department of	750	Transportation Finance Authority, Indiana	135
Fire Marshal, State	650	Underground Storage Tank Financial Assurance Board	328
Fire Prevention and Building Safety Commission	675	†Unemployment Insurance Board, Indiana	640
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Grain Buyers and Warehouse Licensing Agency, Indiana	824	Violent Crime Compensation Division	480
Grain Indemnity Corporation, Indiana	825	†Vocational and Technical Education, Indiana Commission on	572
Hazardous Waste Facility Site Approval Authority, Indiana	323	†Wage Adjustment Board	635
Health, Indiana State Department of	410	War Memorials Commission, Indiana	920
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†Highways, Department of	120	†Water Pollution Control Board	330.1
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Housing Finance Authority, Indiana	930		
Human Service Programs, Interdepartmental Board for the Coordination of	490		

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

State Agencies

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
28	State Information Technology Oversight Commission
†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

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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

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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

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

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

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-203(F)

DIGEST

Amends 312 IAC 11-3-1 and 312 IAC 11-4-3 to allow bulkhead seawalls or previously authorized seawalls to be refaced with glacial stone, under a general license, regardless of the number of times the existing bulkhead or authorized seawall has previously been refaced. Effective 30 days after filing with the secretary of state.

312 IAC 11-3-1

312 IAC 11-4-3

SECTION 1. 312 IAC 11-3-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-1 General licenses for qualified temporary structures; dry hydrants; glacial stone refaces

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

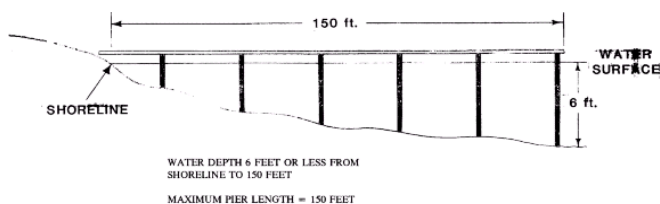
Affected: IC 14-26-2

Sec. 1. (a) The placement and maintenance of a temporary structure, a dry hydrant, or a glacial stone reface is authorized without a written license issued by the department under IC 14-26-2 and this rule if the temporary structure, dry hydrant, or glacial stone reface qualifies under this section.

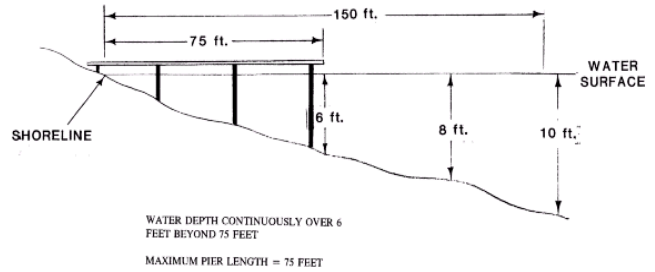
(b) In order for a temporary structure to qualify, the structure must satisfy each of the following:

- (1) Be easily removable.
- (2) Not infringe on the access of an adjacent landowner to the public freshwater lake.
- (3) Not unduly restrict navigation.
- (4) Not be unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.
- (5) Not extend more than one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.
- (6) If a pier, not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.
- (7) Not be a marina.
- (8) Be placed by or with the acquiescence of a riparian owner.

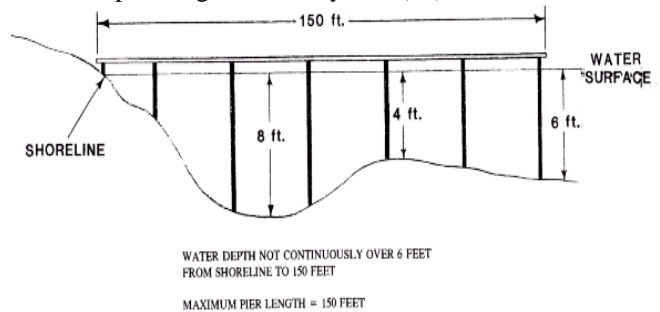
(c) Illustrations of maximum lengths for a pier or similar structure that may qualify under subsection (b) are as follows:



Where the water depth is six (6) feet or less from the shoreline to one hundred fifty (150) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.



Where the maximum water depth is continuously more than six (6) feet beyond seventy-five (75) feet from the shoreline, the maximum pier length is seventy-five (75) feet.



Where the maximum water depth is not continuously over six (6) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.

(d) In order for the placement, maintenance, and operation of a dry hydrant to qualify, the hydrant must satisfy each of the following:

- (1) Be sponsored or owned by a volunteer or full-time fire department recognized by the public safety training institute.
- (2) Be readily accessible from an all-weather road, public access site, or similar area.
- (3) Have a diameter of at least six (6) inches.
- (4) Be constructed of PVC pipe or a similar nontoxic material.
- (5) Extend no more than one hundred fifty (150) feet from the waterline or shoreline.
- (6) Have all portions of the hydrant and its in-lake accessories be at least five (5) feet below the legally established or average normal water level.
- (7) Be marked with a danger buoy, which conforms to ~~312 IAC 2-1-4-6(a)(1)~~ **312 IAC 5-4-6(a)(1)**, at the lakeward end of the hydrant.
- (8) Be equipped with a screen or straining device on the lakeward end.
- (9) Glacial stone or riprap only may be placed in or on the lakebed for either of the following:
 - (A) Bedding the intake pipe.
 - (B) Straining the intake water.
- (10) Be approved by the riparian landowner.

(e) In order for the placement of glacial stone on the lakeward side of a seawall that is located within or along the waterline or shoreline of a public freshwater lake to qualify, the glacial stone reface must satisfy each of the following:

~~(1) The existing seawall must not have been previously refaced.~~

~~(2) (1) The seawall reface must be comprised exclusively of glacial stone.~~

~~(3) (2) The reface must not extend more than four (4) feet lakeward of the waterline or shoreline at the base of the existing wall: a lawful seawall.~~

~~(4) (3) A walk or structural tie must not be constructed on the existing seawall in combination with the glacial stone reface.~~

~~(5) (4) An impermeable material must not be placed behind or beneath the glacial stone reface.~~

~~(6) (5) Filter cloth placed behind or beneath the glacial stone reface must be properly anchored to prevent displacement or flotation.~~

~~(7) (6) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake.~~

(Natural Resources Commission; 312 IAC 11-3-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614; filed May 25, 2004, 8:45 a.m.: 27 IR 3062)

SECTION 2. 312 IAC 11-4-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-3 Seawall refacing

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-26-2

Sec. 3. (a) A written license under IC 14-26-2 and this rule is required to reface on the lakeward side of a seawall that is located within or along the waterline or shoreline of a public freshwater lake.

(b) **Except as provided in 312 IAC 11-3-1(e)**, the director or a delegate shall not issue a license to reface a seawall if the wall has been previously refaced.

(c) To qualify for a license if a seawall is to be refaced in a significant wetland or an area of special concern, the seawall reface must be comprised of either or both of the following:

- (1) Bioengineered materials.
- (2) Glacial stone.

(d) To qualify for a license if a seawall is to be refaced in a developed area, the seawall reface must be comprised of one (1) or some combination of the following:

- (1) Bioengineered material.
- (2) Glacial stone.
- (3) Riprap.
- (4) Concrete.
- (5) Steel sheet piling.

(e) For a seawall reface comprised of:

(1) glacial stone or riprap, the reface must not extend more than four (4) feet lakeward of the waterline or shoreline at the base of the existing wall;

(2) concrete, the reface must:

(A) not extend more than twelve (12) inches lakeward of the existing seawall; and

(B) be keyed to the lakeward face of the existing seawall;

(3) steel sheet piling, the reface must not extend more than six (6) inches lakeward of the existing seawall; and

(4) bioengineered material, the lakeward extent of the reface must be coordinated with the department before filing the permit application.

(f) Any walk or structural tie constructed on top of the existing seawall must be located landward of the seawall face.

(g) The director or a delegate shall not issue a license for the placement of an impermeable material behind or beneath a seawall reface.

(h) Filter cloth placed behind or beneath the seawall reface must be properly anchored to prevent displacement or flotation.

(i) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake. *(Natural Resources Commission; 312 IAC 11-4-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1616; filed May 25, 2004, 8:45 a.m.: 27 IR 3063)*

LSA Document #03-203(F)

Notice of Intent Published: August 1, 2003; 26 IR 3675

Proposed Rule Published: January 1, 2004; 27 IR 1201

Hearing Held: January 29, 2004

Approved by Attorney General: May 7, 2004

Approved by Governor: May 21, 2004

Filed with Secretary of State: May 25, 2004, 8:45 a.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-220(F)

DIGEST

Amends 312 IAC 2-2-1, 312 IAC 2-2-4, and 312 IAC 2-3-1 governing delegations and informal procedures of the commission and its boards by authorizing the director of the commission's division of hearings to give preliminary adoption to the readoption of rules, where no changes are proposed to existing language, modifying procedures for informal hearings held prior to those governed by IC 4-21.5 to address a hearing by an agency board, and removing an obsolete cross-reference to 310 IAC. Effective 30 days after filing with the secretary of state.

312 IAC 2-2-1
312 IAC 2-2-4
312 IAC 2-3-1

SECTION 1. 312 IAC 2-2-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 2-2-1 Applicability

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 1. (a) This rule governs delegation of authority by the commission.

(b) A delegation in this rule may be supplemented by a delegation in another article of this title. ~~or in 310 IAC.~~ (*Natural Resources Commission; 312 IAC 2-2-1; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064*)

SECTION 2. 312 IAC 2-2-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 2-2-4 Preliminary adoption of rules and readoption of rules

Authority: IC 14-10-2-4

Affected: IC 4-22-2-15; IC 4-22-2.5; IC 14; IC 25

Sec. 4. (a) The secretary of the commission may approve a rule for preliminary adoption.

(b) **Where no amendment is proposed, the director of the commission's division of hearings may, under IC 4-22-2.5, give preliminary adoption to rules for recodification by readoption.** (*Natural Resources Commission; 312 IAC 2-2-4; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3340; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064*)

SECTION 3. 312 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 2-3-1 Applicability of rule; late or incomplete license application; time for giving notice

Authority: IC 14-11-4-9

Affected: IC 4-21.5; IC 14-11-4-8; IC 14-21-1-17

Sec. 1. (a) This rule governs the conduct of a public hearing held on the question of the issuance, conditioning, or denial of an original or renewal license under IC 14-11-4-8.

(b) This rule also governs the conduct of a public hearing held under IC 14-21-1-17. However, sections 3 through 5 of this rule do not apply to a public hearing under this subsection.

(c) A person who conducts a public hearing before any agency action is taken by the director, ~~the historic preservation~~

~~review~~ a board, or a delegate of the director or ~~historic preservation review~~ a board may apply this rule even if IC 14-11-4-8 is inapplicable. The hearing officer who applies this subsection shall announce at the beginning of the public hearing that this rule applies. **A board may appoint a person, a panel of persons, or the entirety of the board to serve as the hearing officer.** If this subsection is implemented, section 3 of this rule does not apply.

(d) This rule does not apply to a hearing that is governed by 312 IAC 2-1 or 312 IAC 3-1.

(e) The director or the delegate of the director may deny a license application that is not completed in a reasonable period of time. If an agency action to deny a license application is made because the application is incomplete, the application does not qualify for a public hearing under this rule, but that agency action is subject to administrative review under IC 4-21.5 and 312 IAC 3-1.

(f) The time period for giving notice begins upon mailing if a notice required by this rule or IC 14-11-4 is made by the United States mail. Three (3) days are added to the period required for a notice that is made by the United States mail. (*Natural Resources Commission; 312 IAC 2-3-1; filed Aug 20, 1997, 3:16 p.m.: 21 IR 26; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064*)

LSA Document #03-220(F)

Notice of Intent Published: September 1, 2003; 26 IR 3906

Proposed Rule Published: January 1, 2004; 27 IR 1205

Hearing Held: January 29, 2004

Approved by Attorney General: May 11, 2004

Approved by Governor: May 25, 2004

Filed with Secretary of State: May 26, 2004, 3:15 p.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-296(F)

DIGEST

Amends 312 IAC 1-1-19.5, 312 IAC 1-1-27.5, 312 IAC 1-1-29.3, 312 IAC 10-2-33.5, 312 IAC 11-5-2, and 312 IAC 19-1-3 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. Effective 30 days after filing with the secretary of state.

312 IAC 1-1-19.5

312 IAC 1-1-27.5

312 IAC 1-1-29.3

312 IAC 10-2-33.5

312 IAC 11-5-2

312 IAC 19-1-3

SECTION 1. 312 IAC 1-1-19.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 1-1-19.5 “Includes” defined

Authority: IC 14-10-2-4
Affected: IC 14; IC 25

Sec. 19.5. “Includes” means includes, but is not limited to. (*Natural Resources Commission; 312 IAC 1-1-19.5; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

SECTION 2. 312 IAC 1-1-27.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 1-1-27.5 “State plane coordinate” or “SPC” defined

Authority: IC 14-10-2-4
Affected: IC 14; IC 32-19-1-1

Sec. 27.5. “State plane coordinate” or “SPC” has the meaning set forth in IC 32-19-1-1. (*Natural Resources Commission; 312 IAC 1-1-27.5; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

SECTION 3. 312 IAC 1-1-29.3 IS ADDED TO READ AS FOLLOWS:

312 IAC 1-1-29.3 “Universal transverse mercator” or “UTM” defined

Authority: IC 14-10-2-4
Affected: IC 14

Sec. 29.3. “Universal transverse mercator” or “UTM” means UTM Zone 16, NAD 83, in meters. (*Natural Resources Commission; 312 IAC 1-1-29.3; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

SECTION 4. 312 IAC 10-2-33.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-33.5 “Reconstruction” defined

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1

Sec. 33.5. “Reconstruction”, for the purposes of IC 14-28-1-20, IC 14-28-1-24, and IC 14-28-1-25, means an activity that rehabilitates or restores the structural elements of a building, including replacing floors or working on an element needed to support the structure. The term does not, however, include any of the following:

- (1) Painting.
- (2) Replacing floor coverings.
- (3) Replacing doors.
- (4) Replacing windows.
- (5) Cleaning.
- (6) Performing similar activities.

(*Natural Resources Commission; 312 IAC 10-2-33.5; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

SECTION 5. 312 IAC 11-5-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-5-2 Nonconforming uses; nuisances; modifications

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 14-26-2

Sec. 2. (a) A structure or facility that was lawfully placed before the effective date of a section of **312 IAC 11-3, 312 IAC 11-4, or** this rule (including a structure or facility lawfully placed under a section of 310 IAC 6-2 before its repeal), which would be unlawful if placed after that date, is a lawful nonconforming use.

(b) **The director or the director’s designee may order the removal of** a lawful nonconforming use under subsection (a) ~~may be ordered to be removed or modified by the director; or the director’s designee;~~ if the structure or facility is either of the following:

- (1) A nuisance that adversely affects:
 - (A) public safety;
 - (B) natural resources;
 - (C) natural scenic beauty; or
 - (D) **the** water level of a public freshwater lake.
- (2) Modified in a manner for which a license is required under IC 14-26-2 or this rule.

(c) An order issued under subsection (b) is controlled by IC 4-21.5-3-8 unless an emergency exists, in which event IC 4-21.5-4 may be applied.

(d) Nothing in this rule affects the department’s right to seek injunctive or other relief under IC 14-26 or another applicable law. (*Natural Resources Commission; 312 IAC 11-5-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2228; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

SECTION 6. 312 IAC 19-1-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 19-1-3 Application for license; fee

Authority: IC 14-31-3-14
Affected: IC 14-31-3

Sec. 3. As prerequisites to the issuance of a ginseng dealer’s license, a person must file with the division both of the following:

- (1) A completed application for ginseng dealer’s license.
- (2) A fee payable to the department in the amount of ~~twenty-five~~ **one hundred** dollars ~~(\$25).~~ **(\$100).**

(*Natural Resources Commission; 312 IAC 19-1-3; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4193; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

LSA Document #03-296(F)

Notice of Intent Published: December 1, 2003; 27 IR 906

Proposed Rule Published: February 1, 2004; 27 IR 1617

Hearing Held: February 26, 2004
Approved by Attorney General: April 26, 2004
Approved by Governor: May 6, 2004
Filed with Secretary of State: May 11, 2004, 9:00 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #03-135(F)

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 Purpose

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; filed Jun 7, 2004, 5:00 p.m.; 27 IR 3066*)

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 rule [*sic.*] 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 1-5-1.

(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 [*sic.*]).

(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 procedure 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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3066)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3067)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3067)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3067)

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 1(15) of this rule) or an extended assessment program (section 2(11) 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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3067)

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 to [sic.] 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 9-1-19 through 515 IAC 9-1-24). (*Professional Standards Board; 515 IAC 4-2-1; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3067*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3068*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3068*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3068*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3068*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3069*)

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 professional standards 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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3069*)

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 [sic.]), 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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3070)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3070)

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 6.1-2(s)) and directly to mentor if an accredited nonpublic school. (Professional Standards Board; 515 IAC 4-2-10; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3070)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3070*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3071*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3071*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3071*)

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 8-1-40 through 515 IAC 8-1-44) is required to complete only one (1) assessment program during his or her professional career. (*Professional Standards Board; 515 IAC 4-2-15; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3071*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3071*)

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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3072*)

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 9-1-19) or emergency permit for administration or school services (515 IAC 9-1-20 through 515 IAC 9-1-26) 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; filed Jun 7, 2004, 5:00 p.m.: 27 IR 3072*)

LSA Document #03-135(F)

Notice of Intent Published: June 1, 2003; 26 IR 3075

Proposed Rule Published: December 1, 2003; 27 IR 925

Hearing Held: January 9, 2004

Approved by Attorney General: May 21, 2004

Approved by Governor: June 1, 2004

Filed with Secretary of State: June 7, 2004, 5:00 p.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #03-325(F)

DIGEST

Amends 844 IAC 4-4.5-12 to revise the passing requirements for the United States Medical Licensing Examination (USMLE). Effective 30 days after filing with the secretary of state.

844 IAC 4-4.5-12

SECTION 1. 844 IAC 4-4.5-12 IS AMENDED TO READ AS FOLLOWS:

844 IAC 4-4.5-12 Passing requirements for United States Medical Licensing Examination Step III

Authority: IC 25-22.5-2-7

Affected: IC 25-22.5-3-1; IC 25-22.5-3-2

Sec. 12. The following are the examination passing requirements for licensure:

(1) A score of seventy-five (75) is the minimum passing score for Step III of the United States Medical Licensing Examination (USMLE).

(2) An applicant may have a maximum of five (5) attempts to pass each step of the USMLE. Therefore, upon the fifth seating of each step of the exam, the applicant must obtain a passing score.

(3) All steps of the USMLE must be taken and successfully passed within a seven (7) year time period. This seven (7) year period begins when the applicant first ~~takes~~ passes a step, either Step I or Step II. In counting the number of attempts regarding USMLE steps, previous attempts on the National Board Medical Examination and the examination of the Federation of State Medical Boards of the United States are included.

(*Medical Licensing Board of Indiana; 844 IAC 4-4.5-12; filed Sep 3, 2002, 3:38 p.m.: 26 IR 31; filed Jun 7, 2004, 4:15 p.m.: 27 IR 3072*)

LSA Document #03-325(F)

Notice of Intent Published: January 1, 2004; 27 IR 1199

Proposed Rule Published: April 1, 2004; 27 IR 2334
Hearing Held: April 22, 2004
Approved by Attorney General: May 19, 2004
Approved by Governor: June 3, 2004
Filed with Secretary of State: June 7, 2004, 4:15 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #03-326(F)

DIGEST

Amends 856 IAC 1-33-1 to revise the definition of counseling and to add the definitions of offer and patient. Adds 856 IAC 1-33-1.5 to establish the requirements for an offer. Amends 856 IAC 1-33-2 to revise the requirements for patient counseling. Amends 856 IAC 1-33-4 to revise the institutional patient exception. Adds 856 IAC 1-33-5 to establish the grounds for discipline for patient counseling violations. Effective 30 days after filing with the secretary of state.

856 IAC 1-33-1	856 IAC 1-33-4
856 IAC 1-33-1.5	856 IAC 1-33-5
856 IAC 1-33-2	

SECTION 1. 856 IAC 1-33-1 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-1 Definitions

Authority: IC 25-26-13-4
 Affected: IC 25-26-13-4

Sec. 1. As used in The following definitions apply throughout this rule:

- (1) "Counseling" means ~~effective~~ **appropriate** communication, by a pharmacist, ~~to a patient, as defined in subdivision (3), of information in order to improve for the purpose of improving~~ therapeutic outcomes by maximizing the proper use of ~~prescription medications~~ **drugs** and devices ~~dispensed pursuant to prescriptions.~~
- (2) "Offer" means a statement that is verbal or, only if necessary for an individual patient, nonverbal, for example, printed or written, that clearly informs the patient that a pharmacist is available, at the time the offer is made, to counsel the patient, including, but not limited to, giving information to or answering questions, or both, from the patient.
- (3) "Patient" means the following:
 - (A) The individual for whom a prescription was issued.
 - (B) The caregiver of the individual for whom a prescription was issued.
 - (C) The agent of the individual for whom a prescription was issued.

(Indiana Board of Pharmacy; 856 IAC 1-33-1; filed Dec 1,

1992, 5:00 p.m.: 16 IR 1176; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Jun 7, 2004, 4:45 p.m.: 27 IR 3073)

SECTION 2. 856 IAC 1-33-1.5 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-33-1.5 Offer requirements

Authority: IC 25-26-13-4
 Affected: IC 25-26-13-10

Sec. 1.5. (a) The following can satisfy an offer:

- (1) A pharmacist counseling the patient.
- (2) A pharmacist intern/extern registered under IC 25-26-13-10 if:
 - (A) permitted by the pharmacist; and
 - (B) the counseling by the pharmacist intern/extern is followed by a bona fide offer for the pharmacist to counsel the patient and if the patient or patient's representative desires such counseling.
- (3) A written notice containing the pharmacy's phone number and a bona fide offer when:
 - (A) a patient is not present and has not authorized the giving of information to another; or
 - (B) the drug or device is delivered by the United States Postal Service, parcel delivery, or hand delivery.
- (4) Any personnel in the prescription department, as defined in 856 IAC 1-13-3(b)(3), making an offer to counsel, as defined in section 1(2) of this rule.

(b) The following cannot satisfy an offer:

- (1) Making an offer for the patient to ask questions.
- (2) Any other method that serves to shift the responsibility from the pharmacists to the patient for initiating the counseling or for selecting the informational content of the counseling.
- (3) Relaying information through an intermediary, unless needed for translations, hearing impaired, or other situation beyond the control of the pharmacist.
- (4) Using signs or other types of written notices or written information given to the patient with each drug dispensed.

(Indiana Board of Pharmacy; 856 IAC 1-33-1.5; filed Jun 7, 2004, 4:45 p.m.: 27 IR 3073)

SECTION 3. 856 IAC 1-33-2 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-2 Patient counseling requirements

Authority: IC 25-26-13-4
 Affected: IC 25-26-13-16

Sec. 2. (a) Upon the receipt of a prescription or upon the subsequent refilling of a prescription, and following a review of the patient's prescription medication profile, the pharmacist shall be responsible for the initiation of an offer, **as set forth in section 1.5(a) of this rule,** to ~~discuss matters~~ counsel ~~which,~~

the patient on matters that, in the pharmacist's professional judgment, are significant to optimizing drug therapy. Depending upon the situation, these matters may include, but are not necessarily limited to, the following:

- (1) The name and description of the medicine.
- (2) The route, dosage form, dosage, route of administration, and duration of drug therapy.
- (3) Special directions and precautions.
- (4) Common adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur.
- (5) Techniques for self-monitoring drug therapy.
- (6) Proper storage.
- (7) Prescription refill information.
- (8) Action to be taken in the event of a missed dose.

(b) Counseling shall be in person, whenever practicable, or through access to a telephone service ~~which that~~ is toll-free for long distance calls and be held with the patient, the patient's caregiver, or the patient's representative.

(c) Alternative forms of patient information may be used to supplement verbal counseling when appropriate. Examples include written information leaflets, pictogram labels, and video programs. Nothing in this subsection shall be construed to mean that supplements may be a substitute for verbal counseling when verbal counseling is practicable.

(d) Nothing in this rule shall be construed as requiring a pharmacist to provide counseling when a patient ~~refuses~~ **knowingly declines (waives)** the offer to counsel.

(e) Requesting or accepting, or both, a waiver for counseling for all prescriptions both present and future is not permitted. An offer must be made with each prescription-dispensing visit.

(f) The patient's declining of counseling must be documented in either written or electronic format. The required documentation may be on the same form as or with another pharmacy-related authorization, only if it is clear to the patient that the documentation form also contains the patient's intent to decline (waive) counseling. The documentation subject to this section shall be retained in the pharmacy licensed area or in a secure area under the pharmacy's control, which is readily available for inspection, for a period of not less than two (2) years. (Indiana Board of Pharmacy; 856 IAC 1-33-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1176; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Jun 7, 2004, 4:45 p.m.: 27 IR 3073)

SECTION 4. 856 IAC 1-33-4 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-4 Institutional patient exception

Authority: IC 25-26-13-4
Affected: IC 25-26-13-4

Sec. 4. The requirements for patient counseling, as described in this rule, shall not apply to patients residing in institutional facilities in Indiana as defined under ~~856 IAC 1-28-1(a)~~. **856 IAC 1-28.1-1(6).** (Indiana Board of Pharmacy; 856 IAC 1-33-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1177; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Jun 7, 2004, 4:45 p.m.: 27 IR 3074)

SECTION 5. 856 IAC 1-33-5 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-33-5 Patient counseling violations

Authority: IC 25-26-13-4
Affected: IC 25-1-9

Sec. 5. Violation of this rule shall be grounds for discipline by the board under either IC 25-1-9 or 856 IAC 1-20. (Indiana Board of Pharmacy; 856 IAC 1-33-5; filed Jun 7, 2004, 4:45 p.m.: 27 IR 3074)

LSA Document #03-326(F)

Notice of Intent Published: January 1, 2004; 27 IR 1199

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Incorporated Documents Filed with Secretary of State: None

TITLE 910 CIVIL RIGHTS COMMISSION

LSA Document #03-254(F)

DIGEST

Adds 910 IAC 2-4-6 through 910 IAC 2-4-10 concerning housing intended and operated for persons at least 55 years of age. Effective 30 days after filing with the secretary of state.

910 IAC 2-4-6

910 IAC 2-4-9

910 IAC 2-4-7

910 IAC 2-4-10

910 IAC 2-4-8

SECTION 1. 910 IAC 2-4-6 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-6 Housing for persons who are at least 55 years of age

Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003
Affected: IC 22-9.5-1-2

Sec. 6. (a) The provisions regarding familial status shall not apply to housing intended and operated for persons fifty-five (55) years of age or older. Housing qualifies for this exemption if the alleged violation occurred:

- (1) before July 1, 2003, and the housing community or facility complied with the rules of the ICRC in effect at the time of the alleged violation; or
- (2) on or after July 1, 2003, and the housing community or facility complies with:
 - (A) IC 22-9.5-3-4; and
 - (B) this section and sections 7 through 10 of this rule.

(b) For purposes of this rule, “housing facility or community” means any dwelling or group of dwelling units governed by a common set of rules, regulations, or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to, the following:

- (1) A condominium association.
- (2) A cooperative.
- (3) A property governed by a homeowners’ or resident association.
- (4) A municipally zoned area.
- (5) A leased property under common private ownership.
- (6) A mobile home park.
- (7) A manufactured housing community.

(c) For purposes of this rule, “older person” means a person who is at least fifty-five (55) years of age. (*Civil Rights Commission; 910 IAC 2-4-6; filed May 26, 2004, 3:25 p.m.: 27 IR 3074*)

SECTION 2. 910 IAC 2-4-7 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-7 80 percent occupancy

Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003
Affected: IC 22-9.5-1-2

Sec. 7. (a) In order for a housing facility or community to qualify as housing for older persons under IC 22-9.5-3-4(a)(3), at least eighty percent (80%) of its occupied units must be occupied by at least one (1) person who is at least fifty-five (55) years of age.

- (b) For purposes of this rule, “occupied unit” means:
- (1) a dwelling unit that is actually occupied by one (1) or more persons on the date that the exemption is claimed; or
 - (2) a temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this section, “occupied by at least one (1) person who is at least fifty-five (55) years of age” means that on the date the exemption for housing designed for persons who are at least fifty-five (55) years of age is claimed:

- (1) at least one (1) occupant of the dwelling unit is at least fifty-five (55) years of age; or

- (2) if the dwelling unit is temporarily vacant, at least one (1) of the occupants immediately prior to the date on which the unit was temporarily vacated was at least fifty-five (55) years of age.

(d) Newly constructed housing for first occupancy after March 12, 1989, need not comply with the requirements of this section until at least twenty-five percent (25%) of the units are occupied. For purposes of this section, “newly constructed housing” includes a facility or community that has been wholly unoccupied for at least ninety (90) days prior to reoccupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though, as follows:

- (1) On September 13, 1988, under eighty percent (80%) of the occupied units in the housing facility or community were occupied by at least one (1) person who is at least fifty-five (55) years of age, provided that at least eighty percent (80%) of the units occupied by new occupants after September 13, 1988, are occupied by at least one (1) person who is at least fifty-five (55) years of age.
- (2) There are unoccupied units, provided that at least eighty percent (80%) of the occupied units are occupied by at least one (1) person who is at least fifty-five (55) years of age.
- (3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under fifty-five (55) years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.
- (4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by 910 IAC 2-3-5 and who are under fifty-five (55) years of age.
- (5) For a period expiring one (1) year from the effective date of this section, there are insufficient units occupied by at least one (1) person who is at least fifty-five (55) years of age, but the housing facility or community, at the time the exemption is asserted:

- (A) has reserved all unoccupied units for occupancy by at least one (1) person who is at least fifty-five (55) years of age until at least eighty percent (80%) of the units are occupied by at least one (1) person who is at least fifty-five (55) years of age; and
- (B) meets the requirements of sections 6 and 8 through 10 of this rule.

(f) For purposes of the transition provision described in subsection (e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least eighty percent (80%) of the occupied units by at least one (1) person who is at least fifty-five (55) years of age.

(g) Where application of the eighty percent (80%) rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one (1) person who is at least fifty-five (55) years of age.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one (1) person who is at least fifty-five (55) years of age, so long as the housing facility or community complies with section 8 of this rule. (*Civil Rights Commission; 910 IAC 2-4-7; filed May 26, 2004, 3:25 p.m.: 27 IR 3075*)

SECTION 3. 910 IAC 2-4-8 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-8 Intent to operate as housing designed for persons who are at least 55 years of age

Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003

Affected: IC 22-9.5-1-2

Sec. 8. (a) In order for a housing facility or community to qualify as housing designed for persons who are at least fifty-five (55) years of age, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons who are at least fifty-five (55) years of age. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

- (1) The manner in which the housing facility or community is described to prospective residents.
- (2) Any advertising designed to attract prospective residents.
- (3) Lease provisions.
- (4) Written rules, regulations, covenants, deed, or other restrictions.
- (5) The maintenance and consistent application of relevant procedures.
- (6) Actual practices of the housing facility or community.
- (7) Public posting in common areas of statements describing the facility or community as housing for persons who are at least fifty-five (55) years of age.

(b) Phrases such as “adult living”, “adult community”, or similar statements in any written advertisement or prospectus are not consistent with an intent to operate as housing for persons at least fifty-five (55) years of age.

(c) If there is language in deeds or other community or facility documents which is inconsistent with the intent to provide housing for persons who are fifty-five (55) years of age or older, the ICRC shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of section 7 of this rule and subsection (a). (*Civil Rights Commission; 910 IAC 2-4-8; filed May 26, 2004, 3:25 p.m.: 27 IR 3076*)

SECTION 4. 910 IAC 2-4-9 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-9 Verification of occupancy

Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003

Affected: IC 22-9.5-1-2

Sec. 9. (a) In order for a housing facility or community to qualify as housing for persons who are at least fifty-five (55) years of age, it must be able to produce, in response to a complaint filed under this article, verification of compliance with section 7 of this rule through reliable surveys and affidavits.

(b) A facility or community shall, within one hundred eighty (180) days of the effective date of this section, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one (1) occupant of each unit is at least fifty-five (55) years of age. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in subsection (b) must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two (2) years. A survey may include information regarding whether any units are occupied by persons described in section 7(e)(1), 7(e)(3), and 7(e)(4) of this rule.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

- (1) Driver’s license.
- (2) Birth certificate.
- (3) Passport.
- (4) Immigration card.
- (5) Military identification.
- (6) Any other state, local, national, or international official documents containing a birth date of comparable reliability.
- (7) A certification in a lease, application, affidavit, or other document signed by any member of the household eighteen (18) years of age or older asserting that at least one (1) person in the unit is at least fifty-five (55) years of age.

(e) A facility or community shall consider any one (1) of the forms of verification identified above as adequate for

verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one (1) person who is at least fifty-five (55) years of age. Such evidence may include the following:

- (1) Government records or documents, such as a local household census.
- (2) Prior forms or applications.
- (3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person. (*Civil Rights Commission; 910 IAC 2-4-9; filed May 26, 2004, 3:25 p.m.: 27 IR 3076*)

SECTION 5. 910 IAC 2-4-10 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-10 Good faith defense against money damages

Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003

Affected: IC 22-9.5-1-2; IC 22-9.5-6-15; IC 22-9.5-7-2; IC 22-9.5-8.1-2

Sec. 10. (a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this rule.

(b) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

(c) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently

claiming the defense that it complies with the requirements for such an exemption as housing for persons at least fifty-five (55) years of age in order for such person to claim the defense.

(d) For purposes of this section, "authorized representative", of a housing facility or community, means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this rule.

(e) For purposes of this section, "person" means a natural person.

(f) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons at least fifty-five (55) years of age. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in subsection (b). (*Civil Rights Commission; 910 IAC 2-4-10; filed May 26, 2004, 3:25 p.m.: 27 IR 3077*)

LSA Document #03-254(F)

Notice of Intent Published: October 1, 2003; 27 IR 211

Proposed Rule Published: February 1, 2004; 27 IR 1644

Hearing Held: February 27, 2004

Approved by Attorney General: May 11, 2004

Approved by Governor: May 25, 2004

Filed with Secretary of State: May 26, 2004, 3:25 p.m.

Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-29(AC)(2)

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in LSA Document #03-29(F), printed at 27 IR 59:

- (1) In 312 IAC 5-6-6(b)(5)(A), on page 2 of the original document (27 IR 60), after “UTM”, delete “311364.04” and insert “4586701.18”.
- (2) In 312 IAC 5-6-6(b)(5)(A), on page 2 of the original document (27 IR 60), after “SPC 311364.04” insert “(UTM 606319.19)”.

Filed with Secretary of State: June 9, 2004, 3:40 p.m.

Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from the date and time filed with the Secretary of State.

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Under IC 4-22-2-38, corrects the following clerical error in the Indiana Administrative Code, 2004 edition:

- In 460 IAC 2-3-1(b), delete “460 IAC 4” and insert “460 IAC 2-5”.

Filed with Secretary of State: June 9, 2004, 2:50 p.m.

Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from the date and time filed with the Secretary of State.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #02-117(AC)

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in LSA Document #02-117(F), printed at 26 IR 2967:

- (1) In 675 IAC 22-2.3-18, on page 6 of the original document (26 IR 2970), delete “FULES” and insert “FUEL”.
- (2) In 675 IAC 22-2.3-18, on page 6 of the original document (26 IR 2970), delete “675 16” and insert “675 IAC 16”.
- (3) In 675 IAC 22-2.3-111(3), on page 23 of the original document (26 IR 2981), after “thirty (30) feet”, insert “(nine and one hundred forty-four thousandths (9.144) meters)”.
- (4) In 675 IAC 22-2.3-111(3), on page 23 of the original document (26 IR 2981), after “fifteen (15) feet”, insert “(four and five hundred seventy-two thousandths (4.572) meters)”.
- (5) In 675 IAC 22-2.3-111, in the definition of HOTELS AND MOTELS, on page 23 of the original document (26 IR

2982), delete “accomodations” and insert “accommodations”.

(6) In 675 IAC 22-2.3-111, in the definition of HOTELS AND MOTELS, on page 23 of the original document (26 IR 2982), delete “guest” and insert “guests”.

(7) In 675 IAC 22-2.3-284, in 3301.2.1, in the definition for AERIAL SHELL, on page 51 of the original document (26 IR 3000), delete “funtions” and insert “functions”.

(8) In 675 IAC 22-2.3-284, in 3301.2.1, in the definition for DETONATION, on page 52 of the original document (26 IR 3301), delete “pressence” and insert “presence”.

(9) In 675 IAC 22-2.3-284, in 3301.2.1, in the definition for ELECTRIC BLASTING CAP, on page 52 of the original document (26 IR 3001), delete “bee” and insert “been”.

(10) In 675 IAC 22-2.3-284, in 3301.2.1, in the definition for FIREWORKS, 1.4G, on page 52 of the original document (26 IR 3001), delete “composituon” and insert “composition”.

(11) In 675 IAC 22-2.3-284, in 3301.2.1, in the definition for FIREWORKS, 1.3G, on page 52 of the original document (26 IR 3001), delete “grms” and insert “grams”.

(12) In 675 IAC 22-2.3-284, in 3302.1.5, on page 55 of the original document (26 IR 3003), delete “be be” and insert “be”.

(13) In 675 IAC 22-2.3-284, in 3302.2.1.1, 3, 3.2, on page 57 of the original document (26 IR 3005), delete “percussions” and insert “percussion”.

(14) In 675 IAC 22-2.3-284, in 3302.3.4.2, 17, on page 59 of the original document (26 IR 3006), delete “filed” and insert “filled”.

(15) In 675 IAC 22-2.3-284, in 3303.1.2, on page 62 of the original document (26 IR 3009), delete “posses” and insert “possess”.

(16) In 675 IAC 22-2.3-284, in Table 3304.5-A, in the fifth column, on page 67 of the original document (26 IR 3012), delete “95,00” and insert “95,000”.

(17) In 675 IAC 22-2.3-284, in 3306.4.8.5, on page 72 of the original document (26 IR 3016), delete “crown” and insert “crowd”.

(18) In 675 IAC 22-2.3-305, on page 78 of the original document (26 IR 3020), after “station”, insert “”””.

Filed with Secretary of State: May 11, 2004, 1:34 p.m.

Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from date and time filed with the Secretary of State.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-120

Under IC 4-22-2-41, LSA Document #04-120, printed at 27
IR 2761, is withdrawn.

**TITLE 410 INDIANA STATE DEPARTMENT OF
HEALTH**

LSA Document #02-321

Under IC 4-22-2-41, LSA Document #02-321, printed at 26
IR 3116, is withdrawn.

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TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-165(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 011. Effective June 17, 2004.

SECTION 1. The name of this pull-tab game is "Pull-Tab Game Number 011, EZ Slots".

SECTION 2. Pull-tab tickets for pull-tab game number 011 shall sell for twenty-five cents (\$0.25) per ticket.

SECTION 3. Pull-tab game number 011 is a match 3 game.

SECTION 4. A pull-tab ticket in pull-tab game number 011 shall contain nine (9) play symbols and play symbol captions arranged in a matrix of three (3) 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 011 shall consist of the following possible play symbols:

- (1) A picture of a diamond
DIAMOND
- (2) A picture of a gold bar
GOLD BAR
- (3) A picture of a seven
SEVEN
- (4) A picture of a cherry
CHERRY
- (5) A picture of spade
SPADE
- (6) A picture of a lemon
LEMON
- (7) A picture of a horseshoe
HORSESHOE
- (8) A picture of a bell
BELL

SECTION 5. A row on a pull-tab ticket in pull-tab game number 011 which contains two (2) identical play symbols of a diamond and one (1) picture of a spade or a cherry or a seven or a gold bar is not a match 3 winning row unless all of the following are true:

- (1) The play symbols and play symbol captions in the row are consistent with those specified in SECTION 4 of this rule *[document]*.
- (2) The three (3) play symbols and play symbol captions in the row are bisected by a pink arrow.
- (3) The prize amount appears on the left side of the row 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 011 containing a match 3 winning row is entitled to a prize amount the approximate number *[sic., numbers]* of which are as follows:

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
2 diamond + 1 spade	\$ 0.50	305,532
2 diamond + 1 cherry	\$ 1.00	29,808
2 diamond + 1 seven	\$ 5.00	7,452
2 diamond + 1 gold bar	\$50.00	3,726

SECTION 7. A total of approximately two million five hundred thousand (2,500,000) pull-tab tickets will be initially available for pull-tab game number 011. The odds of winning a prize in pull-tab game 011 are approximately 1 in 7.23. 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 011 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, 1-800-955-6886, or from any pull-tab ticket retailer.

LSA Document #04-165(E)

Filed with Secretary of State: June 9, 2004, 1:05 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-166(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 692. Effective June 11, 2004.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 692, 24K".

SECTION 2. Scratch-off tickets in scratch-off game number 692 shall sell for two dollars (\$2) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 692 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 scratch-off game number 692, 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 coin
WIN
- (22) A picture of a gold bar
WIN ALL

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 692 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) \$7.00
SEVEN
- (7) \$10.00
TEN
- (8) \$15.00
FIFTEEN
- (9) \$20.00
TWENTY
- (10) \$30.00
THIRTY
- (11) \$50.00
FIFTY
- (12) \$100
ONE HUN
- (13) \$500
FIVE HUN
- (14) \$10,000
TEN THOU
- (15) \$24,000
TWY FOR THOU

SECTION 4. The holder of a ticket in scratch-off game number 692 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 any of the "WINNING NUMBERS", the holder is entitled to the prize amount paired with the matched number. If the play symbol of a picture of coin 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 gold bar with the play symbol caption "WIN ALL" is exposed in the "YOUR NUMBERS" area, the player is entitled to all ten (10) prize amounts. The number of matches, paired prize amount play symbols, total prize amounts, and number of winners in scratch-off game number 692 are as follows:

Number of Matches and Paired Prize Amount Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – \$2.00	\$2	326,400
1 – \$4.00	\$4	268,800
1 – \$2.00 + 1 – \$3.00 with coin	\$5	57,600
1 – \$5.00	\$5	38,400
10 – \$1.00 with bar	\$10	19,200
5 – \$2.00	\$10	19,200
1 – \$3.00 + 1 – \$7.00 with coin	\$10	19,200

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1 – \$10.00	\$10	19,200
10 – \$2.00 with bar	\$20	9,600
10 – \$2.00	\$20	9,600
1 – \$5.00 + 1 – \$15.00	\$20	9,600
1 – \$20.00	\$20	9,600
10 – \$5.00 with bar	\$50	3,200
5 – \$10.00	\$50	3,200
1 – \$50.00	\$50	2,400
10 – \$10.00 with bar	\$100	1,280
1 – \$50 + 1 – \$50 with coin	\$100	1,280
1 – \$10.00 + 1 – \$30.00 + 3 – \$20.00	\$100	1,280
1 – \$100	\$100	1,280
4 – \$100	\$400	480
10 – \$100 with bar	\$1,000	16
5 – \$100 + 1 – \$500 with coin	\$1,000	16
1 – \$10,000	\$10,000	8
1 – \$24,000	\$24,000	4

SECTION 5. (a) There shall be approximately three million eight hundred thousand (3,800,000) scratch-off tickets initially available in scratch-off game number 692.

(b) The odds of winning a prize in scratch-off game number 692 are approximately 1 in 4.68.

(c) All reorders of tickets for scratch-off game number 692 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 scratch-off game number 692 is June 30, 2005.

SECTION 7. This document expires July 31, 2005.

LSA Document #04-166(E)

Filed with Secretary of State: June 9, 2004, 1:05 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-167(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 699. Effective June 11, 2004.

SECTION 1. The name of this scratch-off game is

“Scratch-Off Game Number 699, Serious Jack”.

SECTION 2. Scratch-off tickets in scratch-off game number 699 shall sell for one dollar (\$1) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 699 shall contain twelve (12) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. The play symbols and play symbols captions shall be arranged in a matrix of four (4) rows and three (3) columns. The rows shall be separate and independent games labeled “GAME 1”, “GAME 2”, “GAME 3”, and “GAME 4”, respectively. The columns shall be labeled “YOUR CARD”, “DEALER’S CARD”, and “PRIZE”, respectively.

(b) The play symbols and play symbol captions, other than *[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 DBL
(11)	Q QUN
(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) \$1.00
ONE
- (2) \$2.00
TWO

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- (3) \$4.00
FOUR
- (4) \$5.00
FIVE
- (5) \$10.00
TEN
- (6) \$20.00
TWENTY
- (7) \$25.00
TWY FIV
- (8) \$40.00
FORTY
- (9) \$100
ONE HUN
- (10) \$500
FIV HUN
- (11) \$1,000
ONE THOU
- (12) \$5,000
FIV THOU

SECTION 4. (a) The holder of a scratch-off ticket in scratch-off game number 699 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If the play symbol and play symbol caption exposed in the "YOUR CARD" column have a higher value than the play symbol and play symbol caption exposed in the "DEALER'S CARD" column, the holder is entitled to the corresponding prize amount for that game. If a play symbol representing a picture of a "JACK" is exposed, the holder is automatically entitled to double the prize amount for that game. 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 scratch-off game number 699 are as follows:

Number of Winning Games and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – \$1.00	\$1	788,800
1 – \$2.00	\$2	163,200
1 – \$1.00 with Jack	\$2	380,800
1 – \$4.00	\$4	27,200
4 – \$1.00	\$4	27,200
1 – \$ 2.00 with Jack	\$4	180,800
1 – \$5.00	\$5	13,600
3 – \$1.00 + 1 – \$1.00 with Jack	\$5	40,800
1 – \$10.00	\$10	13,600
1 – \$5.00 with Jack	\$10	54,400
3 – \$2.00 + 1 – \$4.00	\$10	13,600

1 – \$20.00	\$20	13,600
1 – \$10.00 with Jack	\$20	13,600
1 – \$40	\$40	3,400
4 – \$10.00	\$40	4,148
1 – \$100	\$100	680
2 – \$25.00 + 1 – \$25.00 with Jack	\$100	1,870
1 – \$1,000	\$1,000	34
1 – \$500 with Jack	\$1,000	68
1 – \$5,000	\$5,000	34

SECTION 5. (a) There shall be approximately eight million (8,000,000) scratch-off tickets initially available in scratch-off game number 699.

(b) The odds of winning a prize in scratch-off game number 699 are approximately 1 in 4.89.

(c) All reorders of tickets for scratch-off game number 699 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 scratch-off game number 699 is June 30, 2005.

SECTION 7. This document expires on July 31, 2005.

LSA Document #04-167(E)

Filed with Secretary of State: June 9, 2004, 1:05 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-168(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 701. Effective June 11, 2004.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 701, 3 Card Cash".

SECTION 2. Scratch-off tickets in scratch-off game number 701 shall sell for two dollars (\$2) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 701 shall contain thirty-two (32) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. There shall

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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”. Each game shall contain three (3) play symbols and play symbol captions representing playing cards and one (1) play symbol and play symbol caption representing a prize amount.

(b) The play symbols and play symbol captions, other than *[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 QUN
(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) \$1.00
ONE
- (2) \$2.00
TWO
- (3) \$4.00
FOUR
- (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) \$400
FOUR HUN
- (11) \$500
FIVE HUN
- (12) \$10,000
TEN THOU
- (13) \$15,000
FTN THOU

SECTION 4. (a) The holder of a scratch-off ticket in scratch-off game number 701 shall remove the latex material covering the thirty-two (32) play symbols and play symbol captions. If two (2) like play symbols and play symbol captions are exposed in “HAND 1”, “HAND 2”, “HAND 3”, “HAND 4”, “HAND 5”, “HAND 6”, “HAND 7”, or “HAND 8”, the holder is entitled to the corresponding prize amount for that game. If three (3) like play symbols and play symbol captions are exposed in “HAND 1”, “HAND 2”, “HAND 3”, “HAND 4”, “HAND 5”, “HAND 6”, “HAND 7”, or “HAND 8”, the holder is entitled to triple 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 scratch-off game number 701 are as follows:

Number of Winning Hands and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – \$2.00	\$2	345,600
1 – \$4.00	\$4	268,800
1 – \$1.00 triple + 1 – \$2.00	\$5	57,600
1 – \$5.00	\$5	38,400
7 – \$1.00 + 1 – \$1.00 triple	\$10	19,200
5 – \$2.00	\$10	19,200
2 – \$5.00	\$10	19,200
1 – \$10.00	\$10	19,200
7 – \$2.00 + 1 – \$2.00 triple	\$20	9,600
2 – \$10.00	\$20	9,600
1 – \$5.00 + 1 – \$5.00 triple	\$20	9,600
1 – \$20.00	\$20	9,600
7 – \$5.00 + 1 – \$5.00 triple	\$50	3,200
5 – \$10.00	\$50	3,200
1 – \$50	\$50	2,560

6 – \$10.00 + 2 – \$20.00	\$100	1,280
1 – \$10.00 + 1 – \$30.00 triple	\$100	1,280
1 – \$10.00 + 3 – \$20.00 + 1 – \$30.00	\$100	1,280
1 – \$100	\$100	1,120
1 – \$100 + 1 – \$100 triple	\$400	256
1 – \$400	\$400	224
6 – \$50 + 1 – \$100 triple + 1 – \$400	\$1,000	16
5 – \$100 + 1 – \$500	\$1,000	16
1 – \$10,000	\$10,000	8
1 – \$15,000	\$15,000	4

SECTION 5. (a) There shall be approximately three million eight hundred thousand (3,800,000) scratch-off tickets initially available in scratch-off game number 701.

(b) The odds of winning a prize in scratch-off game number 701 are approximately 1 in 4.57.

(c) All reorders of tickets for scratch-off game number 701 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 scratch-off game number 701 is June 30, 2005.

SECTION 7. This document expires on July 31, 2005.

LSA Document #04-168(E)

Filed with Secretary of State: June 9, 2004, 1:05 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-169(E)

DIGEST

Adds 65 IAC 4-342 concerning scratch-off game number 706. Effective June 11, 2004.

65 IAC 4-342

SECTION 1. 65 IAC 4-342 IS ADDED TO READ AS FOLLOWS:

Rule 342. Scratch-Off Game 706

65 IAC 4-342-1 Name

Authority: IC 4-30-3-7; IC 4-30-3-9

Affected: IC 4-30

Sec. 1. The name of this scratch-off game is “Scratch-Off Game Number 706, \$500,000 Money Mania”. (State Lottery Commission; 65 IAC 4-342-1; emergency rule filed Jun 9, 2004, 1:05 p.m.; 27 IR 3085, eff Jun 11, 2004)

65 IAC 4-342-2 Ticket price

Authority: IC 4-30-3-7; IC 4-30-3-9

Affected: IC 4-30

Sec. 2. Scratch-off tickets for scratch-off game number 706 shall sell for ten dollars (\$10) per ticket. (State Lottery Commission; 65 IAC 4-342-2; emergency rule filed Jun 9, 2004, 1:05 p.m.; 27 IR 3085, eff Jun 11, 2004)

65 IAC 4-342-3 Play symbols

Authority: IC 4-30-3-7; IC 4-30-3-9

Affected: IC 4-30

Sec. 3. (a) Each scratch-off ticket in scratch-off game number 706 shall contain forty-six (46) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Six (6) play symbols and play symbol captions shall appear in the area labeled “WINNING NUMBERS”. Forty (40) 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 scratch-off game number 706, 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

Emergency Rules

(13) 13
TRN
(14) 14
FRN
(15) 15
FTN
(16) 16
SXT
(17) 17
SVT
(18) 18
ETN
(19) 19
NTN
(20) 20
TWY
(21) 21
TWN
(22) 22
TWT
(23) 23
TWR
(24) 24
TWF
(25) 25
TWV
(26) 26
TWS
(27) 27
TSN
(28) 28
TWE
(29) 29
TNI
(30) 30
TTY
(31) 31
THO
(32) 32
THT
(33) 33
TTH
(34) 34
TTF
(35) 35
THF
(36) 36
THS
(37) 37
TTS
(38) 38
THE
(39) 39
THN
(40) 40
FRY

(41) 41
FRO
(42) 42
FRT
(43) 43
FTH
(44) 44
FRF
(45) 45
FRV
(46) 46
FRS
(47) 47
FSN
(48) 48
FRE
(49) 49
FNI
(50) 50
FTY
(51) 51
FYO
(52) 52
FYT
(53) 53
FYH
(54) 54
FYF
(55) 55
FYV
(56) 56
FYS
(57) 57
FYN
(58) 58
FYE
(59) 59
FNN
(60) 60
SXY
(61) A picture of \$\$
WIN

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 706 shall consist of the following possible play symbols and play symbol captions:

(1) \$5.00
FIVE
(2) \$10.00
TEN
(3) \$15.00
FIFTEEN
(4) \$20.00
TWENTY

Emergency Rules

(5) \$50.00 FIFTY	<div>Number of Matches and Paired Prize Amount Play Symbols</div> <div>2 – \$5.00</div> <div>1 – \$10.00</div> <div>3 – \$5.00</div> <div>1 – \$15.00</div> <div>2 – \$5.00 + 1 – \$10.00</div> <div>2 – \$10.00</div> <div>1 – \$20.00</div> <div>10 – \$5.00</div> <div>6 – \$5.00 + 1 – \$20.00</div> <div>5 – \$10.00</div> <div>2 – \$20.00 + 1 – \$10.00</div> <div>1 – \$50.00</div> <div>20 – \$5.00</div> <div>10 – \$10.00</div> <div>5 – \$20.00</div> <div>1 – \$10.00 + 2 – \$20.00 + 1 – \$50.00</div> <div>1 – \$100</div> <div>20 – \$10.00</div> <div>10 – \$20.00</div> <div>1 – \$10.00 + 2 – \$20.00 + 3 – \$50.00</div> <div>15 – \$20.00 + 4 – \$50.00</div> <div>10 – \$50.00</div> <div>6 – \$50.00 + 2 – \$100</div> <div>5 – \$100</div> <div>1 – \$500</div> <div>20 – \$50.00</div> <div>10 – \$50.00 + 5 – \$100</div> <div>10 – \$100</div> <div>5 – \$200</div> <div>1 – \$1,000</div> <div>5 – \$100 + 10 – \$200 + 5 – \$500</div> <div>1 – \$5,000</div> <div>20 – \$500</div> <div>1 – \$10,000</div> <div>1 – \$250,000</div>	<div>Total Prize Amount</div> <div>\$10</div> <div>\$10</div> <div>\$15</div> <div>\$15</div> <div>\$20</div> <div>\$20</div> <div>\$20</div> <div>\$50</div> <div>\$50</div> <div>\$50</div> <div>\$50</div> <div>\$50</div> <div>\$100</div> <div>\$100</div> <div>\$100</div> <div>\$100</div> <div>\$100</div> <div>\$200</div> <div>\$200</div> <div>\$200</div> <div>\$500</div> <div>\$500</div> <div>\$500</div> <div>\$500</div> <div>\$500</div> <div>\$1,000</div> <div>\$1,000</div> <div>\$1,000</div> <div>\$1,000</div> <div>\$5,000</div> <div>\$5,000</div> <div>\$10,000</div> <div>\$10,000</div> <div>\$250,000</div>	<div>Approximate Number of Winners</div> <div>302,400</div> <div>302,400</div> <div>100,800</div> <div>100,800</div> <div>201,600</div> <div>201,600</div> <div>100,800</div> <div>11,550</div> <div>11,550</div> <div>11,550</div> <div>11,550</div> <div>11,550</div> <div>10,500</div> <div>10,500</div> <div>10,500</div> <div>10,500</div> <div>10,500</div> <div>3,150</div> <div>2,940</div> <div>2,940</div> <div>420</div> <div>420</div> <div>420</div> <div>420</div> <div>420</div> <div>420</div> <div>210</div> <div>210</div> <div>210</div> <div>210</div> <div>42</div> <div>42</div> <div>84</div> <div>42</div> <div>10</div>		
(6) \$100 ONE HUN					
(7) \$200 TWO HUN					
(8) \$500 FIVE HUN					
(9) \$1,000 ONE THOU					
(10) \$5,000 FIVE THOU					
(11) \$10,000 TEN THOU					
(12) \$250,000 TWHNFY THOU					
(State Lottery Commission; 65 IAC 4-342-3; emergency rule filed Jun 9, 2004, 1:05 p.m.: 27 IR 3085, eff Jun 11, 2004)					
65 IAC 4-342-4 How to play					
Authority: IC 4-30-3-7; IC 4-30-3-9					
Affected: IC 4-30					
Sec. 4. The holder of a scratch-off ticket for scratch-off game 676 [sic., 706] shall remove the latex material covering the forty-six (46) play symbols and play symbol captions. If any of “YOUR NUMBERS” match any of the “WINNING NUMBERS”, the holder is entitled to the paired prize amount. If the play symbol “\$\$” is exposed, the holder is automatically entitled to the paired prize amount. At the end of scratch-off game 706, the winners of the “\$250,000” prizes will be contacted by the Hoosier Lottery and informed that they are a participant in a special bonus drawing for a chance to win one (1) additional prize of “\$250,000”. At the drawing, two (2) winners will each win an extra prize of “\$250,000”. (State Lottery Commission; 65 IAC 4-342-4; emergency rule filed Jun 9, 2004, 1:05 p.m.: 27 IR 3087, eff Jun 11, 2004)					
65 IAC 4-342-5 “Pack” defined					
Authority: IC 4-30-3-7; IC 4-30-3-9					
Affected: IC 4-30					
Sec. 5. For purposes of scratch-off game number 706, “pack” means a set of scratch-off tickets each bearing a common pack number, fan-folded in strips of one (1) ticket. (State Lottery Commission; 65 IAC 4-342-5; emergency rule filed Jun 9, 2004, 1:05 p.m.: 27 IR 3087, eff Jun 11, 2004)					
65 IAC 4-342-6 Number of prizes					
Authority: IC 4-30-3-7; IC 4-30-3-9					
Affected: IC 4-30					
Sec. 6. The prize amounts and number of winners in scratch-off game number 676 [sic., 706] are as follows:					
65 IAC 4-342-7 Number of tickets; odds; reorders					
Authority: IC 4-30-3-7; IC 4-30-3-9					
Affected: IC 4-30					
Sec. 7. (a) A total of approximately five million (5,000,000) scratch-off tickets will be initially available for scratch-off game number 706.					

Emergency Rules

(b) The odds of winning a prize with a scratch-off ticket in scratch-off game number 706 are approximately 1 in 3.50.

(c) All reorders of tickets for scratch-off game number 706 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 4-342-7; emergency rule filed Jun 9, 2004, 1:05 p.m.: 27 IR 3087, eff Jun 11, 2004*)

65 IAC 4-342-8 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 scratch-off game 706 within which to claim their prizes. 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 scratch-off ticket retailer. (*State Lottery Commission; 65 IAC 4-342-8; emergency rule filed Jun 9, 2004, 1:05 p.m.: 27 IR 3088, eff Jun 11, 2004*)

SECTION 2. SECTION 1 of this document takes effect June 11, 2004.

LSA Document #04-169(E)

Filed with Secretary of State: June 9, 2004, 1:05 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-150(E)

DIGEST

Temporarily amends 312 IAC 18-3 concerning entomology and plant pathology to regulate the emerald ash borer (*Agrilus planipennis*) as a pest or pathogen and to provide standards for quarantine in Jamestown Township in Steuben County and Newbury Township in LaGrange County, which is infested with the species. Repeals LSA Document #04-118(E), printed at 27 IR 2757. Effective May 26, 2004.

SECTION 1. (a) Emerald ash borer (*Coleoptera: Buprestidae: Agrilus planipennis*) is a pest or pathogen and is regulated under this document.

(b) These terms apply to this document and are in addition to definitions contained in 312 IAC 1 and 312 IAC 18-1:

- (1) "Certificate of inspection" means a document issued

or authorized to be issued by the state entomologist to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist for this purpose, including a phytosanitary document or multiple use quarantine certificate.

(2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this SECTION and other stated conditions.

(3) "Infested area" means a site where the emerald ash borer is present or where circumstances make it reasonable to believe that the ash borer is present.

(4) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this SECTION.

(5) "Move" means to ship, offer for shipment, receive for transportation, transport, carry, or allow to move or to ship.

(c) The following are regulated under this document:

- (1) Jamestown Township, Steuben County; and
- (2) Newbury Township, LaGrange County.

(d) The following items are regulated articles:

- (1) The emerald ash borer in any living stage of development.
- (2) Any ash tree (*Fraxinus* spp.), including nursery stock.
- (3) A limbs [*sic.*], stump, branch, or debris of at least one (1) inch in diameter of an ash tree.
- (4) An ash log or untreated ash lumber with bark attached.
- (5) Composted and uncomposted ash chips and composted and uncomposted ash bark chips at least one (1) inch in diameter.
- (6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of spread of the emerald ash borer.
- (7) Cut firewood of any species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:

- (1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.

(2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees F., if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees F. or higher if the article is shipped in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by the emerald ash borer.

(3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.

(4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.

(5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees F., if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees F. or higher, if the article is shipped in an enclosed vehicle or completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.

(3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of

this SECTION must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this document.

(l) Uncomposted ash chips and uncomposted ash bark chips no larger than one (1) inch in diameter are exempted from the requirements of this document.

SECTION 2. LSA Document #04-118(E) IS REPEALED.

SECTION 3. SECTION 1 of this document expires on April 1, 2005.

LSA Document #04-150(E)

Filed with Secretary of State: May 26, 2004, 3:26 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-152(E)

DIGEST

Temporarily amends 312 IAC 18-3 concerning entomology and plant pathology to regulate the emerald ash borer (*Agrilus planipennis*) as a pest or pathogen and to provide standards for quarantine in Jamestown Township in Steuben County and Clay Township in LaGrange County, which is infested with the species. Repeals LSA Document #04-150(E), printed at 27 IR 3088. Effective June 2, 2004.

SECTION 1. (a) Emerald ash borer (Coleoptera: Buprestidae: *Agrilus planipennis*) is a pest or pathogen and is regulated under this document.

(b) These terms apply to this document and are in addition to definitions contained in 312 IAC 1 and 312 IAC 18-1:

(1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist for this purpose, including a phytosanitary document or multiple use quarantine certificate.

(2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this SECTION and other stated conditions.

Emergency Rules

(3) “Infested area” means a site where the emerald ash borer is present or where circumstances make it reasonable to believe that the ash borer is present.

(4) “Inspector” means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this SECTION.

(5) “Move” means to ship, offer for shipment, receive for transportation, transport, carry, or allow to move or to ship.

(c) The following are regulated under this document:

- (1) Jamestown Township, Steuben County; and
- (2) Clay Township, LaGrange County.

(d) The following items are regulated articles:

- (1) The emerald ash borer in any living stage of development.
- (2) Any ash tree (*Fraxinus* spp.), including nursery stock.
- (3) A limbs [*sic.*], stump, branch, or debris of at least one (1) inch in diameter of an ash tree.
- (4) An ash log or untreated ash lumber with bark attached.
- (5) Composted and uncomposted ash chips and composted and uncomposted ash bark chips at least one (1) inch in diameter.
- (6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of spread of the emerald ash borer.
- (7) Cut firewood of any species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:

- (1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.
- (2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:

- (1) From September 1 through April 30, or when the

ambient air temperature is below forty (40) degrees F., if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees F. or higher if the article is shipped in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by the emerald ash borer.

(3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.

(4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.

(5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees F., if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees F. or higher, if the article is shipped in an enclosed vehicle or completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.

(3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of this SECTION must move or destroy the article, at the person’s or owner’s expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this document.

(l) Uncomposted ash chips and uncomposted ash bark chips no larger than one (1) inch in diameter are exempted from the requirements of this document.

SECTION 2. LSA Document #04-150(E) IS REPEALED.

SECTION 3. **SECTION 1 of this document expires on April 1, 2005.**

LSA Document #04-152(E)

Filed with Secretary of State: June 2, 2004, 2:45 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-153(E)

DIGEST

Temporarily allows for excise tax decals to be placed on the mast or a boom of a sailboat, if the decals would not otherwise be visible when the sailboat is underway. (On May 18, 2004, the Natural Resources Commission gave final adoption to proposed new section 312 IAC 5-12.5-1 (LSA Document #03-316) to implement this concept, but the language would likely not complete the review process until completion of the primary 2004 boating season.) Effective June 3, 2004.

SECTION 1. If both excise tax decals that are required by IC 6-6-11-24(2) would not be clearly visible when a sailboat is underway, the taxpayer may display the decals on the mast or boom if the decals are clearly visible in both directions.

SECTION 2. SECTION 1 of this document expires on November 30, 2004.

LSA Document #04-153(E)

Filed with Secretary of State: June 3, 2004, 11:15 a.m.

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-154(E)

DIGEST

Temporarily adds provisions to clarify which provisions apply to persons subject to the permit by rule program established under 326 IAC 2-10. Authority: IC 4-22-2-37.1(a)(14). *NOTE: The original emergency document, LSA Document #04-9(E), printed at 27 IR 1608, effective January 8, 2004, expired April 7, 2004. A second emergency document, LSA Document #04-81(E), printed at 27 IR 2516, effective April 8, 2004, expires July 7, 2004. Effective July 7, 2004. Expires October 5, 2004.*

SECTION 1. The definitions provided in IC 13-11-2, 326 IAC 1-2, and 326 IAC 2-7 shall apply to this document.

SECTION 2. The conditions of this document that limit potential to emit are as follows:

(1) The source limits actual emissions for every twelve (12) month period to less than twenty percent (20%) of any threshold for a major source of the following:

(A) Regulated air pollutants.

(B) Hazardous air pollutants, as defined in Section 112 of the Clean Air Act.

(2) The source does not rely on air pollution control equipment to comply with subdivision (1).

SECTION 3. Not later than thirty (30) days after receipt of a written request by the department or U.S. EPA, the owner or operator shall demonstrate that the source is in compliance with the conditions provided in SECTION 2 of this document. The demonstration of compliance shall be based on actual emissions for the previous twelve (12) months and may include, but is not limited to, the following:

(1) fuel or material usage; or

(2) production records.

No other demonstration of compliance shall be required.

SECTION 4. (a) This document does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided in 326 IAC 2-10-1.

(b) A source subject to this document shall be subject to applicable requirements for a major source, including 326 IAC 2-7, if:

(1) at any time the source is not in compliance with the conditions provided in SECTION 2 of this document; or
(2) the source does not timely or adequately demonstrate compliance with the conditions in SECTION 2 of this document as required under SECTION 3 of this document.

SECTION 5. Any violation of this document may result in administrative or judicial enforcement proceedings under IC 13-30-3 and penalties under IC 13-30-4, IC 13-30-5, and IC 13-30-6.

SECTION 6. SECTIONS 1 through 5 of this document expire on October 5, 2004, or upon the effective date of 326 IAC 2-10, whichever occurs earlier.

LSA Document #04-154(E)

Filed with Secretary of State: June 7, 2004, 11:15 a.m.

**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

LSA Document #04-151(E)

DIGEST

Temporarily amends 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, and 405 IAC 6-5-6 affecting eligibility and benefits under the Indiana Prescription Drug Program and amends the definition and duration of eligibility and benefits for enrollees. Authority: IC 4-22-2-37.1; IC 12-10-16-5. Effective June 1, 2004.

SECTION 1. (405 IAC 6-2-5) "Complete application" means an application 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 currently has insurance that includes a prescription drug benefit, **except for a Medicare Drug Discount Card.**
- (7) Whether the applicant is on Medicaid with prescription drug assistance.
- (8) Whether the applicant intends to reside in Indiana permanently.
- (9) Proof of income.
- (10) Signature.

SECTION 2. (405 IAC 6-3-3) (a) After July 1, 2002, program availability will be no sooner than the date complete application is received and approved.

(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.

(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.

(d) All current enrollees shall be automatically enrolled in a new benefit period on June 1, 2004.

SECTION 3. (405 IAC 6-4-2) (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	\$1,011 \$1,048
2	\$1,364 \$1,406
3	\$1,717 \$1,764

(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.

SECTION 4. (405 IAC 6-4-3) Notwithstanding any other provision of this ~~article~~, **document**, an individual is not eligible for the program if any of the following apply:

- (1) The ~~individual applicant currently~~ has ~~health~~ insurance ~~with that includes~~ a prescription drug benefit, ~~at the time of application~~. **except for a Medicare Drug Discount Card.**
- (2) The individual is not domiciled in Indiana.
- (3) The individual does not intend to reside permanently in Indiana.
- (4) The individual is an inmate of a correctional facility.

SECTION 5. (405 IAC 6-5-1) 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.
- (7) Whether the individual has a Medicare Drug Discount Card and has spent the \$600 annual transitional assistance credit. The provider shall encourage the enrollee to use the Medicare Drug Discount Card benefit first.**

SECTION 6. (405 IAC 6-5-2) (a) The **amount of benefit** at the time of purchase, which is issued to an enrollee per benefit period, is **will be** limited by family monthly net income as follows: **to a maximum of \$1,200 over a period of nineteen (19) months and prorated depending on time of enrollment.**

Income Guideline	Individual's Monthly Net Income	Couple's Monthly Net Income	Annual Benefit
Up to 135% of federal poverty guideline	Up to \$1,011 per month	Up to \$1,364 per month	50% benefit; up to \$500 benefit/year
Up to 120% of federal poverty guideline	Up to \$898 per month	Up to \$1,212 per month	50% benefit; up to \$750 benefit/year
Under 100% of federal poverty guideline	Up to \$748 per month	Up to \$1,010 per month	50% benefit; up to \$1,000 benefit/year
\$1,200 if en- rolled June – September 2004	\$1,000 if en- rolled October – December 2004	\$800 if enrolled January – March 2004	Prorate \$200 per quarter after March 2005

(b) An enrollee and spouse who are enrolled in the program will each receive the maximum benefit at the time of purchase for prescription drug expenses **up to the annual benefit for which amount** in subsection (a) **for which** they qualify. **by family income level.**

(c) **The prescription drug program will pay 75% of the cost of prescription drugs up to the individual's maximum limit. Enrollee will pay 25% of the cost of prescription drugs up to the individual's maximum limit.**

(~~(b)~~) (d) Upon such time as the enrollee exceeds the ~~annual~~ **maximum** 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.

SECTION 7. (405 IAC 6-5-3) The point of service benefit shall be ~~one (1) year for a period~~ of continuous eligibility up to the **individual's maximum** benefit limit in accordance with SECTION 2 6 of this ~~rule~~ **document.**

SECTION 8. (405 IAC 6-5-4) (a) The point of service benefit is available to an enrollee ~~for one (1) year of continuous benefits~~ **through December of 2005.**

(b) Following the expiration of the enrollee's last benefit period, the individual must reenroll for the point of service benefit. A new application must be submitted to the office in accordance with this ~~article~~ **document.**

SECTION 9. (405 IAC 6-5-6) (a) At the point of service, benefits are available under this program on a first come, first served basis.

(b) **If eligible, enrollees are encouraged to enroll in the Medicare Drug Discount Card program and apply for the \$600 annual transitional assistance available for low-income beneficiaries. Seniors are encouraged to use the \$600 annual Medicare benefit first before using the prescription drug program benefit.**

(~~(b)~~) (c) Benefits will exist under this program to the extent that appropriations are available for the program.

(~~(c)~~) (d) The state budget director shall determine if appropriations are available to continue offering and paying benefits to enrollees.

SECTION 10. This document expires on August 29, 2004.

LSA Document #04-151(E)

Filed with Secretary of State: June 1, 2004, 10:45 a.m.

Notice of Rule Adoption

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-134(F)

Under IC 12-8-3-4.4, LSA Document #03-134, printed at 26 IR 3706, was adopted by the Secretary of Family and Social Services Administration on Tuesday, June 8, 2004. This rule amends 405 IAC 2-8-1 to eliminate the exclusion of a life insurance policy and annuity from the definition of “estate” for Medicaid estate recovery purposes. Amends 405 IAC 2-8-1.1 to reduce the estate recovery exemption for jointly-owned real property from \$125,000 to \$75,000. Amends 405 IAC 2-10-3 to eliminate the prohibition on filing a lien when an individual who provided care to the Medicaid recipient resides in the home. Amends 405 IAC 2-10-7 to provide that a lien expires unless the Office of Medicaid Policy and Planning commences a foreclosure action within two years of the recipient’s death. Adds 405 IAC 2-10-7.1 specifying procedures for voiding the lien. Amends 405 IAC 2-10-8 to eliminate the prohibition on enforcement when a recipient is survived by a parent. Amends 405 IAC 2-10-9 to provide that a lien is subordinate to the security interest of a financial institution that loans money to be used as operating capital for a farm, business, or income-producing property. Adds 405 IAC 2-10-11 to specify that property that is disregarded for eligibility purposes in connection with the purchase and use of a qualified long term care insurance policy is exempt from lien placement and enforcement. Repeals 405 IAC 2-10-10 to eliminate the exemption of \$125,000 on property subject to a lien.. The rule which was adopted is the same version as the proposed rule which was published in the Indiana Register on August 1, 2003.

**TITLE 328 UNDERGROUND STORAGE TANK
FINANCIAL ASSURANCE BOARD**

LSA Document #02-204

The Underground Storage Tank Financial Assurance Board (board) gives notice that the date of the public hearing for consideration of final adoption of LSA Document #02-204, printed at 27 IR 2769, 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 **July 8, 2004**, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana, the Underground Storage Tank Financial Assurance Board will hold a public hearing on amendments to the excess liability trust fund rules at 328 IAC 1.*

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 Lynn West, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana). If the date or location of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register. Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015*

or call (317) 233-0855, TDD: (317) 233-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

#03-312(SWMB)

The Solid Waste Management Board (board) gives notice that the date of the public hearing for consideration of preliminary adoption of #03-312(SWMB), printed at 27 IR 2592, the 2003 Hazardous Waste Annual Update, has been changed. Please note: This hearing will be held in July instead of August as previously noticed. 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 **July 20, 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 new rules and amendments to rules at 329 IAC 3.1 and 329 IAC 13.*

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 Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana). If the date or location of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register. Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015*

or call (317) 233-0855, TDD: (317) 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 IDEM Office of Land Quality, Indiana Government Center-North 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

Change in Notice of Public Hearing

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

LSA Document #04-54

The Indiana Education Savings Authority gives notice that the date of the public hearing for consideration of the adoption of LSA Document #04-54, printed at 27 IR 2879, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

*Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on **August 2, 2004** at 10:30 a.m., at the Indiana Education Savings Authority, One North Capitol, Suite 110, Indianapolis, Indiana the Indiana Education Savings Authority will hold a public hearing to readopt rules.*

Send written comments to:

Indiana Education Savings Authority

Attention: Executive Director

One North Capitol, Suite 444

Indianapolis, Indiana 46204

Copies of these rules are now on file at the Indiana Education Savings Authority, One North Capitol, Suite 444 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Susan Loftus

Executive Director

Indiana Education Savings Authority

Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mark C. Webb

Executive Secretary

Alcohol and Tobacco Commission

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #04-14

The Alcohol and Tobacco Commission gives notice that the date of the public hearing for LSA Document #04-14, printed at 27 IR 2579, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

*Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on **July 26, 2004**, at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on the readoption of 905 IAC 1-43, Excursion and Adjacent Landsite Permits. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana, and are open for public inspection.*

Mark C. Webb

Executive Secretary

Alcohol and Tobacco Commission

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #03-319

The Alcohol and Tobacco Commission gives notice that the date of the public hearing for consideration of the final adoption of LSA Document #03-319, printed at 27 IR 2576, 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 **July 26, 2004**, at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana, the Alcohol and Tobacco Commission will hold a public hearing on proposed amendments to rules governing the retail sale of beer kegs. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North*

**TITLE 25 INDIANA DEPARTMENT OF
ADMINISTRATION**

LSA Document #04-172

Under IC 4-22-2-23, the Indiana Department of Administration intends to adopt a rule concerning the following:

OVERVIEW: Adds 25 IAC 6-1-1 through 25 IAC 6-8-8 concerning definitions of terms and phrases used in executive lobbying and provides for registration and regulatory procedures and requirements for executive lobbyists and enforcement of such regulation. Public comments are invited. Statutory authority: IC 4-13-1-7.

TITLE 31 STATE PERSONNEL DEPARTMENT

LSA Document #04-170

Under IC 4-22-2-23, the State Personnel Department intends to adopt a rule concerning the following:

OVERVIEW: Amends 31 IAC 1-9-4 and 31 IAC 2-11-4 concerning use of sick leave. Questions or comments concerning the proposed rule may be directed to: State Personnel Department, Attn: Keith Beesley, Indiana Government Center-South, 402 West Washington Street, Room W161, Indianapolis, IN 46204 or by e-mail at kbeesley@spd.state.in.us. Statutory authority: IC 4-15-1.8-6; IC 4-15-1.8-7; IC 4-15-2-6; IC 4-15-2-29.

**TITLE 50 DEPARTMENT OF LOCAL
GOVERNMENT FINANCE**

LSA Document #04-174

Under IC 4-22-2-23, the Department of Local Government Finance intends to adopt a rule concerning the following:

OVERVIEW: Under the authority of IC 6-1.1-35.2-2, as enacted by P.L.177-2002, the Department of Local Government Finance intends to adopt rules to provide for a uniform approval of both a mileage and per diem allowance rates that any new assessing official or county assessor who attends the required new official training pursuant to IC 6-1.1-35.2-2 is entitled to. This rule will also establish the uniform procedures necessary to approve such reimbursements for the county in which the official resides. The Department of Local Government Finance invites written submissions expressing your views on these matters. Questions or comments may be directed to Toma Shepherd, Attorney, Department of Local Government Finance, at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058, Indianapolis, Indiana 46204. Telephone

number: 317-233-4361. Statutory authority: IC 6-1.1-31-1; IC 6-1.1-35.2-2; IC 6-1.1-35.2-3.

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #04-179

Under IC 4-22-2-23, the Indiana Gaming Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 68 IAC 15-3-3 to correct a misspelling. Amends 68 IAC 15-5-2 to determine who may sign an RG-1 and to determine tax calculation in the event a riverboat chooses to observe nonflexible scheduling or flexible scheduling. Amends 68 IAC 15-6-2 to determine what must happen to admissions when a riverboat chooses to observe nonflexible scheduling or flexible scheduling and chooses to observe 24 hour gaming. Amends 68 IAC 15-6-3 to determine what must happen to ticketing if a riverboat chooses to observe nonflexible scheduling or flexible scheduling. Amends 68 IAC 15-6-5 to determine who may sign an RG-1 and to determine what happens to computation of tax when a riverboat chooses to observe nonflexible scheduling or flexible scheduling. Amends 68 IAC 15-13-3 to reflect jackpot tax filings and to define what must happen when a jackpot of over \$1,200 is paid out. Public comments are invited. Questions concerning the proposed rule may be directed to the following number: (317) 233-0046. Statutory authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-5.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-155

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 5-14 governing the inspection, maintenance, and operation of watercraft carrying passengers for hire. Makes numerous substantive and technical changes. Questions concerning the proposed rule amendments may be directed to (317) 233-3322 or slucas@nrc.IN.gov. Statutory authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-157

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

Notice of Intent to Adopt a Rule

OVERVIEW: Amends 312 IAC 11 that governs construction activities along and within public freshwater lakes. Amendments are made to the regulation and treatment of a seawall. These include standards that distinguish a seawall placed in a manmade channel from one placed on a natural shoreline. Allows a bulkhead seawall to be permitted along the upland sides of a manmade channel; defines “natural shoreline”; and amends the definitions for “bulkhead seawall”, “area of special concern”, and “significant wetland”. Also, provides discretion to grant a permit for a seawall or other structure, which might not otherwise satisfy the rule, where public access is enhanced or where a written assessment by a qualified professional demonstrates a particular methodology is needed to control erosion or to stabilize the shoreline and that the methodology would not violate IC 14-26-2. Questions concerning the proposed rule amendments may be directed by telephone to (317) 233-3322 or by e-mail to slucas@nrc.IN.gov. Statutory authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-176

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 18-3-1, which governs standards for the control of larger pine shoot beetles by adding Decatur County, Jennings County, Ripley County, Union County, and Vigo County to the quarantine area. Public questions and comments may be sent to the Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204, at jkane@nrc.IN.gov, or by telephone at (317) 232-4699. Statutory authority: IC 14-10-2-4; IC 14-24-3.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-177

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Establishes a new section 312 IAC 18-3-18 under the article pertaining to entomology and plant pathology to regulate the emerald ash borer (*Agrilus planipennis*) as a pest or pathogen. Provides standards for quarantine of areas infested with the species. Questions concerning the proposed new rule section may be directed to (317) 232-4699 or jkane@nrc.IN.gov. Statutory authority: IC 14-10-2-4; IC 14-24-3.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-158

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: The Indiana State Board of Animal Health is considering adopting rules that will qualify the state of Indiana for United States Department of Agriculture approval under 9 CFR 93.300 et al. to receive equine from countries or regions where contagious equine metritis (CEM) exists or where the country or region trades equine freely with a region in which CEM exists. The rules will include requirements for establishing and operating CEM quarantine stations in the state. Comments on the proposed rule may be sent to the Indiana State Board of Animal Health, Attn: Legal Affairs, 805 Beachway Drive, Suite 50, Indianapolis, Indiana 46224, or by electronic mail to ghaynes@boah.IN.gov. Statutory authority: IC 15-2.1-3-19.

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

LSA Document #04-159

Under IC 4-22-2-23, the Indiana Pesticide Review Board intends to adopt a rule concerning the following:

OVERVIEW: Amends 357 IAC 1-7 to address civil penalties for violations of IC 15-3-3.6, the Indiana Pesticide Use and Application Law, and the rules adopted under that law. Adds definitions of new terms introduced as the result of listing each violation individually on the civil penalty schedule rather than grouping the violations by type. Clarifies which penalties are to be assessed on a per product, per incident, per person, per day, or per year basis. Adds a penalty assessment cap of 180 incidents or 180 days for repetitive violations. Clarifies the factors to be considered when mitigating penalties. Clarifies that civil penalties are not required nor the sole enforcement action for every violation. Clarifies that the civil penalty money collected is to be used by the Purdue University Cooperative Extension Service solely for providing education about pesticides. Statutory authority: IC 15-3-3.6-4; IC 15-3-3.6-14.5.

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

LSA Document #04-160

Under IC 4-22-2-23, the Indiana Pesticide Review Board

intends to adopt a rule concerning the following:

OVERVIEW: Amends 357 IAC 1-6 to address civil penalties for violations of IC 15-3-3.5, the Indiana Pesticide Registration Law, and the rules adopted under that law. Adds definitions of new terms introduced as the result of listing each violation individually on the civil penalty schedule rather than grouping the violations by type. Clarifies which penalties are to be assessed on a per product, per incident, per day, or per year basis. Adds a penalty assessment cap of 180 incidents or 180 days for repetitive violations. Clarifies the factors to be considered when mitigating penalties. Clarifies that civil penalties are not required nor the sole enforcement action for every violation. Clarifies that the civil penalty money collected is to be used by the Purdue University Cooperative Extension Service solely for providing education about pesticides. Statutory authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-178

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: The proposed rule will make the following changes to the Medicaid rules at 405 IAC 1 and 405 IAC 5 to conform to changes in the law and current agency practice. Amends 405 IAC 1-1-5 and 405 IAC 1-1.5-2 to specify that a hospital has 60 days after the date of an overpayment notice to repay the overpayment or to file an appeal. This change is being made to comply with P.L.78-2004. Amends 405 IAC 5-1-5 to update language regarding coding sources. Amends 405 IAC 5-3-13 to eliminate the prior authorization requirement for certain services and to specify that orthodontic procedures for members under 21 years of age for cases of craniofacial deformity or cleft palate are subject to prior authorization. Amends 405 IAC 5-9-1 to allow Medicaid reimbursement for evaluation and management services for 50 office visits per rolling 12 month period without prior authorization. Amends 405 IAC 5-19-1(h) to allow for reimbursement for medical supplies in quantities greater than a one-month supply if the recipient is a Medicare beneficiary and if Medicare allows reimbursement for that quantity. Amends 405 IAC 5-19-10 to specify that Medicaid reimbursement is available for corrective shoe features. Amends 405 IAC 5-26-5 to correct an Indiana Administrative Code reference. Amends 405 IAC 5-28-7 to clarify that Medicaid reimbursement for abortions is available if required by state law. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-13-3, as amended by P.L.78-2004, SECTION 3; IC 12-15-21-2.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #04-161

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Amends rules regarding the birth problems registry to remove birth weight less than 2,500 grams and stillbirth as reportable conditions, require reporting of both a pervasive developmental disorder and fetal alcohol spectrum disorder that is recognized in a child before five years of age. Amends the maximum age of a child whose diagnosis must be reported to the registry and whose report must be included in the registry from two years to three years. Written comments may be submitted to the Indiana State Department of Health, Community and Family Health Services Commission, 2 North Meridian Street, #8C, Indianapolis, Indiana 46204. Statutory authority: IC 16-38-4-7.

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

LSA Document #04-156

Under IC 4-22-2-23, the State Board of Registration for Architects and Landscape Architects intends to adopt a rule concerning the following:

OVERVIEW: Amends 804 IAC 1.1-1-1 to revise the definition of valid certificate. Adds 804 IAC 1.1-8 to establish the continuing education requirements for architects and landscape architects. Adds 804 IAC 1.1-9 to establish the requirements for continuing education providers. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, 302 West Washington Street, Room E034, Indianapolis, IN 46204-2700 or pla10@pla.state.in.us. Statutory authority: IC 25-4-1-3; IC 25-4-1-31; IC 25-4-2-13.

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #04-173

Under IC 4-22-2-23, the Indiana Board of Pharmacy intends to adopt a rule concerning the following:

OVERVIEW: Amends 856 IAC 1-30 to revise the standards for the preparation, labeling, and distribution of sterile pharmaceutical products by licensed pharmacists. Effective 30 days after filing with the secretary of state. Questions or comments

Notice of Intent to Adopt a Rule

concerning the proposed rule may be directed to: Indiana Board of Pharmacy, ATTENTION: Board Director, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204 or by electronic mail at jbolin@hpb.state.in.us. Statutory authority: IC 25-26-13-4.

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #04-175

Under IC 4-22-2-23, the State Board of Registration for Land Surveyors intends to adopt a rule concerning the following:

OVERVIEW: Amends 865 IAC 1-11-1 to revise the fees charged and collected by the board. 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, IN 46204-2700 or by electronic mail pla10@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-21.5-2-14.

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #04-171

Under IC 4-22-2-23, the Indiana Board of Accountancy intends to adopt a rule concerning the following:

OVERVIEW: Amends 872 IAC 1-1-6.1 to revise the educational requirements for first time CPA examination candidates to address the semester hours in accounting, business administration, and economics courses at the undergraduate and graduate level. 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 pla11@pla.state.in.us. Statutory authority: IC 25-2.1-2-15.

TITLE 45 DEPARTMENT OF STATE REVENUE

Proposed Rule
LSA Document #04-125

DIGEST

Adds 45 IAC 1.3 concerning the utility receipts tax, IC 6-2.3, which was effective January 1, 2003 Effective 30 days after filing with the secretary of state.

45 IAC 1.3

SECTION 1. 45 IAC 1.3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 1.3. UTILITY RECEIPTS TAX

Rule 1. Definitions

45 IAC 1.3-1-1 Applicability

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3

Sec. 1. The definitions in IC 6-2.3 and this rule apply throughout this article. (*Department of State Revenue; 45 IAC 1.3-1-1*)

45 IAC 1.3-1-2 "Natural gas" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-1-14

Sec. 2. "Natural gas" means natural gas, either mixed with another substance or pure, used for the following:

- (1) Heat.
- (2) Light.
- (3) Cooling.
- (4) Power.

The term does not include propane gas or liquefied petroleum gas. (*Department of State Revenue; 45 IAC 1.3-1-2*)

45 IAC 1.3-1-3 "Proprietary activities" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-1-12

Sec. 3. "Proprietary activities" includes the furnishing of the following:

- (1) Electrical energy.
- (2) Natural gas.
- (3) Water.
- (4) Steam.
- (5) Telecommunication services.

(*Department of State Revenue; 45 IAC 1.3-1-3*)

Rule 2. Imposition

45 IAC 1.3-2-1 Indiana source income

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-2-1

Sec. 1. An income tax, known as the utility receipts tax, is imposed upon the receipt of the:

- (1) entire taxable gross receipts of a taxpayer that is a resident or a domiciliary of Indiana; and
- (2) taxable gross receipts derived from activities or businesses or any other sources within Indiana by a taxpayer that is not a resident or a domiciliary of Indiana.

(*Department of State Revenue; 45 IAC 1.3-2-1*)

45 IAC 1.3-2-2 Rate of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-2-2

Sec. 2. The receipt of taxable gross receipts from transactions is subject to a tax rate of one and four-tenths percent (1.4%). (*Department of State Revenue; 45 IAC 1.3-2-2*)

45 IAC 1.3-2-3 Liability of stockholder and other owner

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-2-3

Sec. 3. (a) A stockholder who receives a distribution of the assets of a corporation, a joint stock association, or other organization in which the stockholder holds stock is liable, to the extent of the assets the stockholder receives from the organization, for a certain percentage of the unpaid gross receipts taxes that the organization owes after dissolution. That percentage equals the percentage of the total outstanding stock of the organization held by the stockholder before dissolution.

(b) Any other owner of a utility receipts taxpayer who receives a distribution of the assets of a taxpayer in which the owner holds an ownership interest is liable, to the extent of the assets the owner receives from the taxpayer, for a certain percentage of the unpaid utility receipts taxes that the taxpayer owes after dissolution. That percentage equals the percentage of ownership interest the owner held in the taxpayer before dissolution. (*Department of State Revenue; 45 IAC 1.3-2-3*)

45 IAC 1.3-2-4 Exempt federal entities and federal elections

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-2-4; IC 6-3

Sec. 4. (a) Every S corporation or other entity exempt from federal income taxation under Section 1361 of the Internal Revenue Code, partnership, limited liability company, and limited liability partnership is liable for the utility receipts tax. No utility receipts tax liability is imposed under this article on a partner's, member's, beneficiary's, or shareholder's distributive share of the entity's gross income.

(b) Any election by a taxpayer under 26 CFR 301.7701-3

(check-the-box) to change its entity classification for federal adjusted gross income tax purposes, therefore, for state adjusted gross income tax purposes under IC 6-3, is not recognized for utility receipts tax purposes, for example, a partnership that elects to be classified for federal adjusted gross income tax purposes as a corporation remains a partnership for utility receipts tax purposes.

(c) Any election by a taxpayer under Internal Revenue Code Section 1361(b)(3) for federal adjusted gross income tax purposes, therefore for state adjusted gross income tax purposes under IC 6-3, to participate in a Qualified Sub Chapter S Subsidiary (QSSS) filing is not recognized for utility receipts tax purposes with each taxpayer remaining a separate taxable entity. (*Department of State Revenue; 45 IAC 1.3-2-4*)

Rule 3. Classification of Receipts as Gross Receipts

45 IAC 1.3-3-1 Determination of taxable gross receipts

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-1

Sec. 1. Determinations concerning whether the receipts of a taxpayer are taxable gross receipts shall be made in conformity with this rule. (*Department of State Revenue; 45 IAC 1.3-3-1*)

45 IAC 1.3-3-2 Separation of taxable and nontaxable receipts

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-2

Sec. 2. Notwithstanding any other provisions of this article, receipts that would otherwise not be taxable under this article are taxable gross receipts under this article to the extent that the amount of the nontaxable receipts are not separated from the taxable receipts on the records or returns of the taxpayer. (*Department of State Revenue; 45 IAC 1.3-3-2*)

45 IAC 1.3-3-3 Legal settlement or judgment

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-3

Sec. 3. Gross receipts include the amount of any legal settlement or judgment received to compensate the taxpayer for lost retail sales of utility services. (*Department of State Revenue; 45 IAC 1.3-3-3*)

45 IAC 1.3-3-4 Collections of a tax, fee, or surcharge

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-4

Sec. 4. (a) Gross receipts do not include collections by a taxpayer of a tax, fee, or surcharge imposed by a state, a political subdivision, or the United States if:

(1) the tax, fee, or surcharge is imposed solely on the sale

at retail of utility services;

(2) the tax, fee, or surcharge is remitted to the appropriate taxing authority; and

(3) the taxpayer collects the tax, fee, or surcharge separately as an addition to the price of the utility service sold.

(b) Gross receipts do not include collections by a taxpayer of a tax, fee, or surcharge that is:

(1) approved by the Federal Communications Commission or the Indiana utility regulatory commission; and

(2) stated separately as an addition to the price of telecommunication services sold at retail.

(*Department of State Revenue; 45 IAC 1.3-3-4*)

45 IAC 1.3-3-5 Wholesale sale

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-5; IC 6-2.3-4-5

Sec. 5. (a) Gross receipts do not include a wholesale sale to another generator or reseller of utility services.

(b) A sale is a retail sale if the taxpayer sells utility services to a buyer that subsequently makes a sale described in IC 6-2.3-4-5. (*Department of State Revenue; 45 IAC 1.3-3-5*)

45 IAC 1.3-3-6 Bottled water or gas

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-6

Sec. 6. A sale shall be treated as a retail sale if the taxpayer sells water or gas to another individual or entity that bottles and resells the water or gas. (*Department of State Revenue; 45 IAC 1.3-3-6*)

45 IAC 1.3-3-7 Electric cooperatives payments

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-7

Sec. 7. Gross receipts do not include amounts received by a corporation or a division of a corporation owned, operated, or controlled by its member electric cooperatives as payment from the electric cooperatives for electrical energy to be resold to their member-owner consumers. (*Department of State Revenue; 45 IAC 1.3-3-7*)

45 IAC 1.3-3-8 Municipality payments

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-8; IC 8-1-2.2

Sec. 8. Gross receipts do not include amounts received by a joint agency established under IC 8-1-2.2 that constitutes a payment by a municipality that is a member of the joint agency for electrical energy that will be sold by the municipality to retail customers. (*Department of State Revenue; 45 IAC 1.3-3-8*)

45 IAC 1.3-3-9 Cash deposit

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-3-9

Sec. 9. Gross receipts do not include a deposit of cash made with a taxpayer to the extent that the deposit is refundable. (*Department of State Revenue; 45 IAC 1.3-3-9*)

45 IAC 1.3-3-10 Provision of services and equipment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-3-10

Sec. 10. (a) Gross receipts include receipts received for:

- (1) installation;
- (2) maintenance;
- (3) repair;
- (4) equipment; or
- (5) leasing;

services provided to a commercial or domestic consumer that are directly related to the delivery of utility services to the commercial or domestic consumer or the removal of equipment from a commercial or domestic consumer upon the termination of service.

(b) "Directly related to the delivery of utility services" means any services or equipment that is provided to a consumer that permits the consumer to receive and use utility services. (*Department of State Revenue; 45 IAC 1.3-3-10*)

Rule 4. Exemptions

45 IAC 1.3-4-1 Sales to United States government

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-4-1

Sec. 1. Gross receipts derived from sales to the United States government are exempt from the utility receipts tax to the extent the state is prohibited by the Constitution of the United States from taxing the gross receipts. (*Department of State Revenue; 45 IAC 1.3-4-1*)

45 IAC 1.3-4-2 Sales to another state, territory, or foreign country

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-4-2

Sec. 2. Gross receipts derived from business conducted in commerce between Indiana and either another state or territory or a foreign country are exempt from the utility receipts tax to the extent the state is prohibited from taxing the gross receipts by the Constitution of the United States. (*Department of State Revenue; 45 IAC 1.3-4-2*)

45 IAC 1.3-4-3 Governmental entities

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-4-3; IC 13-21; IC 13-26; IC 14-33-20; IC 36-11

Sec. 3. Gross receipts received by any of the following are exempt from the utility receipts tax:

(1) A conservancy district established by IC 14-33-20 or IC 13-3-4 (before its repeal).

(2) A regional water, sewage, or solid waste district established by IC 13-26 or IC 13-3-2 (before its repeal).

(3) A nonprofit corporation formed solely for the purpose of supplying water to the public. For a political subdivision to qualify for this exemption, the political subdivision must be both a nonprofit corporation and have been formed solely for the purpose of supplying water to the public.

(4) A county solid waste management district or a joint solid waste management district established by IC 13-21 or IC 13-9.5-2 (before its repeal).

(5) A nonprofit corporation formed solely for the purpose of providing a combination of:

(A) water; and

(B) sewer and sewage service;

to the public. For a political subdivision to qualify for this exemption, the political subdivision must be both a nonprofit corporation and have been formed solely for the purpose of providing a combination of water and sewer and sewage service to the public.

(6) A county on-site waste management district established by IC 36-11.

(7) A political subdivision for sewer and sewage service. (*Department of State Revenue; 45 IAC 1.3-4-3*)

45 IAC 1.3-4-4 Occasional sale

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-4-4

Sec. 4. An occasional sale of utility services by a taxpayer that is not regularly engaged in the trade or business of selling utility services is exempt from the utility receipts tax. (*Department of State Revenue; 45 IAC 1.3-4-4*)

45 IAC 1.3-4-5 Owner or operator of certain facilities

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-4-5

Sec. 5. (a) This section applies to the sale of utility services by the owner or operator of any of the following facilities:

(1) A commercial:

(A) hotel;

(B) motel;

(C) inn; or

(D) campground.

(2) A park for:

(A) mobile homes;

(B) manufactured homes;

(C) trailers; or

(D) recreational vehicles.

(3) Marinas.

(b) Gross receipts derived from the sale of utility services by an owner or operator described in subsection (a) to a

user of a facility described in subsection (a) are exempt from the utility receipts tax. (*Department of State Revenue; 45 IAC 1.3-4-5*)

Rule 5. Deductions

45 IAC 1.3-5-1 Annual deduction

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-5-1; IC 6-2.3-6-5

Sec. 1. (a) Each taxable year, a taxpayer is entitled to deduct from the taxpayer's gross receipts an amount equal to the product of:

- (1) one thousand dollars (\$1,000); multiplied by
- (2) a fraction.

The numerator of the fraction is the number of days in the taxpayer's taxable year for which the taxpayer is subject to the utility receipts tax, and the denominator of the fraction is the number of days in the taxpayer's taxable year.

(b) If a taxpayer files quarterly gross receipts tax returns, the taxpayer may use a proportionate part of the deduction provided by subsection (a) for each return filed.

(c) A taxpayer is entitled to only one (1) deduction under this section each taxable year, regardless of the number of partners or participants in the organization.

(d) An affiliated group that files a consolidated return under IC 6-2.3-6-5 is entitled to only one (1) deduction under this section on that consolidated return. (*Department of State Revenue; 45 IAC 1.3-5-1*)

45 IAC 1.3-5-2 Bad debt deduction

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-5-2; IC 6-2.5-6-9

Sec. 2. Each taxable year, a taxpayer that reports the taxpayer's gross receipts on an accrual basis is entitled to deduct bad debts from the taxpayer's gross receipts in the same manner provided in IC 6-2.5-6-9. (*Department of State Revenue; 45 IAC 1.3-5-2*)

45 IAC 1.3-5-3 Solid or hazardous waste deduction

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-5-3; IC 13-30-6

Sec. 3. (a) Except as provided in subsection (b), if:

- (1) for federal income tax purposes, a taxpayer is allowed a depreciation deduction for a particular taxable year with respect to a resource recovery system; and
- (2) the resource recovery system processes solid waste or hazardous waste;

the taxpayer is entitled to a deduction from the taxpayer's gross receipts for that same taxable year. The amount of the deduction equals the total depreciation deductions that the taxpayer is allowed, with respect to an Indiana resource

recovery system, for that taxable year under Sections 167 and 179 of the Internal Revenue Code.

(b) A taxpayer is not entitled to the deduction provided by this section for a particular taxable year with respect to a resource recovery system that is directly used to dispose of hazardous waste if during that taxable year the taxpayer is:

- (1) convicted of any violation under IC 13-7-13-3 (before its repeal), IC 13-7-13-4 (before its repeal), or IC 13-30-6; or
- (2) subject to an order or consent decree based upon a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous wastes that had a major or moderate potential for harm.

(c) As used in subsection (b)(2), "major or moderate potential for harm" means a violation that was injurious or threatened to:

- (1) be injurious to:

- (A) human health;
- (B) plant or animal life; or
- (C) property; or

- (2) interfere unreasonably with the enjoyment of life or property.

(*Department of State Revenue; 45 IAC 1.3-5-3*)

45 IAC 1.3-5-4 Reusable container deposit deduction

Authority: IC 6-8.1-3-3

Affected IC 6-2.3-5-4

Sec. 4. (a) Each taxable year, a taxpayer is entitled to deduct from the taxpayer's gross receipts the amount paid by the taxpayer during that taxable year for the return of an empty container of the type customarily returned by the buyer of the contents for reuse as a container if the taxpayer originally included such deposits in its gross receipts.

(b) If a taxpayer is required to file quarterly gross receipts tax returns, the taxpayer may claim the deduction provided by this section on those returns. (*Department of State Revenue; 45 IAC 1.3-5-4*)

45 IAC 1.3-5-5 Mobile telecommunications service deduction

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-5-5; IC 6-8.1-15

Sec. 5. A taxpayer is entitled to a deduction for gross receipts exempt from taxation under IC 6-8.1-15 and the Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.). (*Department of State Revenue; 45 IAC 1.3-5-5*)

45 IAC 1.3-5-6 Bottled water or gas deduction

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-3-6; IC 6-2.3-5-6

Sec. 6. A taxpayer is entitled to a deduction for retail sales

of bottled water or gas to the extent that the purchase of the water or gas was treated as a retail transaction under IC 6-2.3-3-6. (*Department of State Revenue; 45 IAC 1.3-5-6*)

Rule 6. Returns

45 IAC 1.3-6-1 Quarterly returns and payments

Authority: IC 6-8.1-3-3

Affected: IC 4-8.1-2-7; IC 6-2.3-6-1; IC 6-8.1-10-2.1

Sec. 1. (a) Except as provided in subsections (d) through (f), a taxpayer shall file utility receipts tax returns with, and pay the taxpayer's utility receipts tax liability to, the department by the due date of the estimated return. A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated utility receipts tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated utility receipts tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.

(b) With each:

- (1) return filed;
- (2) payment by cashier's check, certified check, or money order delivered in person or by overnight courier; and
- (3) electronic funds transfer made;

a taxpayer shall pay to the department twenty-five percent (25%) of the estimated or the exact amount of utility receipts tax that is due.

(c) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on taxpayers failing to make payments as required in subsection (a), (b), or (e). However, a penalty may not be assessed as to any estimated payments of utility receipts tax that equal or exceed:

- (1) twenty percent (20%) of the final tax liability for the taxable year; or
- (2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall be assessed only on the difference between the actual amount paid by the taxpayer on the estimated return and twenty-five percent (25%) of the taxpayer's final utility receipts tax liability for the taxable year.

(d) If a taxpayer's estimated annual utility receipts tax liability does not exceed one thousand dollars (\$1,000), the taxpayer is not required to file an estimated utility receipts tax return.

(e) If the department determines that a taxpayer's:

- (1) estimated quarterly utility receipts tax liability for the

current year; or

- (2) average estimated quarterly utility receipts tax liability for the preceding year;

exceeds ten thousand dollars (\$10,000), the taxpayer shall pay the estimated utility receipts taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(f) If a taxpayer's utility receipts tax payment is made by electronic funds transfer, the taxpayer is not required to file an estimated utility receipts tax return. (*Department of State Revenue; 45 IAC 1.3-6-1*)

45 IAC 1.3-6-2 Annual return

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-6-2

Sec. 2. (a) Every taxpayer who receives more than one thousand dollars (\$1,000) in gross receipts during a particular taxable year shall file with the department an annual utility receipts tax return. At the time of filing an annual return, a taxpayer shall pay to the department an amount equal to the remainder of:

- (1) the total utility receipts tax liability incurred by the taxpayer for that particular taxable year; minus
- (2) the total amount of utility receipts taxes that were previously paid to the department for any quarter of that same taxable year.

(b) Except as provided in subsection (c), a taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's annual utility receipts tax return and pay the tax, if any, for that taxable year on or before April 15 of the immediately succeeding tax year.

(c) If a taxpayer uses a taxable year that does not end on December 31, the taxpayer shall file its annual utility receipts tax return and pay the tax, if any, for that taxable year on or before the fifteenth day of the fourth month of the immediately succeeding tax year.

(d) Any taxpayer who does not file an annual utility receipts tax return for a taxable year may be required to execute and file with the department a sworn statement that the taxpayer did not receive more than one thousand dollars (\$1,000) of taxable gross receipts during that taxable year. (*Department of State Revenue; 45 IAC 1.3-6-2*)

45 IAC 1.3-6-3 Prohibition on information

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-6-3; IC 6-8.1-3-4

Sec. 3. Any forms prescribed by the department under IC 6-8.1-3-4 that concern the collection of the utility receipts

tax may not require a taxpayer to show the corporate name or title of any stock or the name of the obligor of any other security from which the taxpayer derives gross receipts. (*Department of State Revenue; 45 IAC 1.3-6-3*)

45 IAC 1.3-6-4 Information return

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-6-4

Sec. 4. The department may require a taxpayer who receives gross receipts at two (2) or more business locations within the state to file with each quarterly and annual utility receipts tax return an information return that shows the allocation of gross receipts to each business location at which the gross receipts were received. (*Department of State Revenue; 45 IAC 1.3-6-4*)

45 IAC 1.3-6-5 Consolidated returns

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-6-5

Sec. 5. (a) Corporations are affiliated if at least eighty percent (80%) of the voting stock of one (1) corporation (exclusive of directors' qualifying shares) is owned by the other corporation. Every corporation affiliated with another corporation is affiliated with every corporation that is affiliated with such other corporation. All corporations so affiliated constitute an affiliated group. This definition does not include S corporations.

(b) Corporate members of an affiliated group that are incorporated in Indiana or are authorized to do business in Indiana may file a consolidated utility receipts tax return on or before the due date of the annual return, including valid extensions.

(c) As used in subsection (b), "authorized to do business in Indiana" means:

- (1) a foreign corporation has applied for and been granted a certificate of authority to transact business in Indiana under the appropriate statute; and
- (2) the authority has not been withdrawn or revoked.

(d) An affiliated group may only eliminate intercompany wholesale sales. Sales may not be deducted as both wholesale sales and interstate sales.

(e) Each corporate member of an affiliated group that files a consolidated utility receipts tax return is jointly and severally liable for the utility receipts tax imposed on the affiliated group and on each member of that group.

(f) An affiliated group must elect at the time it files its first annual return whether or not it will file a consolidated utility receipts tax return or whether each corporate member of the group will file a separate utility receipts tax return. After the taxpayer's election is made, the group

must file utility receipts tax returns in the same manner as the group's first annual return is filed, unless the department allows the group to change the manner in which it files utility receipts tax returns.

(g) The first consolidated utility receipts tax return filed by an affiliated group may be filed by any member of the group incorporated in Indiana or authorized to do business in Indiana. Subsequent consolidated returns shall be filed by the member who filed the first consolidated return for the group, unless the department allows another member to file the group's consolidated returns.

(h) An affiliated group filing a consolidated annual return shall file its quarterly returns on a consolidated basis by the same member required to file the annual return. If consolidated quarterly returns have not been filed by the affiliated group, the members of the group will be required to segregate their receipts and verify the proper credit to be taken on the annual return for quarterly payments made. (*Department of State Revenue; 45 IAC 1.3-6-5*)

45 IAC 1.3-6-6 Liability of fiduciary, distributee, and Indiana resident taxpayer

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-6-6

Sec. 6. (a) A receiver, a trustee in dissolution, a trustee in bankruptcy, or an assignee operating the property or business of a taxpayer shall file a utility receipts tax return for that taxpayer and pay any tax due on gross receipts reported in the return in the same manner that the taxpayer would be required to file a return and pay the tax under this rule if the taxpayer had control of the business or property.

(b) Any fiduciary filing a return under subsection (a) shall report all previously unreported income derived from property or business controlled by the fiduciary.

(c) The utility receipts tax liability imposed upon any property held by a fiduciary described in subsection (a) is a lien upon the property from which the gross receipts were derived.

(d) If any utility receipts tax is due and unpaid after a fiduciary described in subsection (a) is discharged, each distributee is liable for the utility receipts tax due in an amount equal to the quotient of:

- (1) the distributee's share of the business or property sold; divided by
- (2) the total distribution made by the fiduciary.

(e) Any resident of Indiana who is a fiduciary described in subsection (a), and who receives gross receipts for a distributee who is not an Indiana resident, must file a utility

receipts tax return and pay the utility receipts tax due with that return before making a distribution to the distributee.

(f) Any taxpayer who is a resident of Indiana, and who receives gross receipts from a fiduciary described in subsection (a) who is not a resident of Indiana, shall:

- (1) file a return reporting the receipt of such gross receipts; and
- (2) pay any utility receipts tax due on such gross receipts; as though the gross receipts had been received directly by the taxpayer, unless the nonresident fiduciary has already paid the tax due on the gross receipts. (*Department of State Revenue; 45 IAC 1.3-6-6*)

45 IAC 1.3-6-7 Accounting methods

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-6-7

Sec. 7. (a) A taxpayer shall use either the cash or accrual method of accounting for purposes of determining the taxpayer's utility receipts tax liability. If a taxpayer uses either the cash or accrual method of accounting for federal tax purposes, the taxpayer must also use that same method in determining the taxpayer's utility receipts tax liability. If a taxpayer does not use either the cash or accrual method of accounting for federal tax purposes, the taxpayer shall use the cash method in determining the taxpayer's utility receipts tax liability.

(b) As used in subsection (a), "cash method of accounting" means that receipts are reported in the year that they are actually or constructively received and deductions are generally taken in the year actually paid unless they should be taken in a different period to clearly reflect income. Examples include depreciation allowances and prepaid expenses.

(c) As used in subsection (a), "accrual method of accounting" means that receipts are reported and expenses are deductible when all the events have occurred that determine the right to the receipts or that determine the amount of the expense and the liability of the taxpayer to pay it. The term does not include any method of accounting other than the standard accrual basis method of accounting. (*Department of State Revenue; 45 IAC 1.3-6-7*)

Rule 7. Penalties

45 IAC 1.3-7-1 Records

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-7-1; IC 6-8.1-5-4

Sec. 1. (a) A taxpayer who fails to keep records of the taxpayer's gross receipts and any other records that may be necessary to determine the amount of utility receipts tax the taxpayer owes for a period of three (3) years, as required by

IC 6-8.1-5-4, commits a Class C infraction.

(b) A taxpayer who fails to permit records described in subsection (a) to be examined at any time by the department in accordance with IC 6-8.1-5-4 commits a Class C infraction.

(c) A taxpayer who knowingly fails to produce or permit the department to examine records described in subsection (a) or (b) commits a Class B misdemeanor. (*Department of State Revenue; 45 IAC 1.3-7-1*)

45 IAC 1.3-7-2 Evasion of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-7-2

Sec. 2. (a) A taxpayer or any officer, employee, or partner of a taxpayer who makes a false entry in the taxpayer's records with the intent to defraud the state or evade payment of the utility receipts tax commits a Class D felony.

(b) A taxpayer or any officer, employee, or partner of a taxpayer who keeps more than one (1) set of records for the taxpayer with the intent to defraud the state or evade the payment of the utility receipts tax commits a Class D felony. (*Department of State Revenue; 45 IAC 1.3-7-2*)

45 IAC 1.3-7-3 Failure to file return

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-7-3

Sec. 3. A person who fails to file a return required by this article or who enters false information in such a return with the intent to defraud the state commits a Class B misdemeanor. (*Department of State Revenue; 45 IAC 1.3-7-3*)

45 IAC 1.3-7-4 Inspection of property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-7-4

Sec. 4. A taxpayer who knowingly fails to permit the department to inspect or appraise any property, or who knowingly fails to offer testimony or to produce any record as required in this article, commits a Class B misdemeanor. (*Department of State Revenue; 45 IAC 1.3-7-4*)

45 IAC 1.3-7-5 General provisions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-7-5; IC 6-8.1-10

Sec. 5. A taxpayer is subject to all applicable provisions of IC 6-8.1, including penalty and interest imposed by IC 6-8.1-10. (*Department of State Revenue; 45 IAC 1.3-7-5*)

Rule 8. Miscellaneous

45 IAC 1.3-8-1 Deposit in general fund

Authority: IC 6-8.1-3-3
Affected: IC 6-2.3-8-1

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Sec. 1. On or before the fifth day of each month, the total amount of utility receipts tax revenues received by the department in the immediately preceding month shall be deposited in the state general fund. *(Department of State Revenue; 45 IAC 1.3-8-1)*

45 IAC 1.3-8-2 Tax in addition to other licenses and taxes

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-8-2

Sec. 2. Except as otherwise specifically provided in this article, the tax imposed by this article is in addition to all other licenses and taxes imposed by law as a condition precedent to engaging in any business, privilege, occupation, or activity that is taxable under such other license or tax. *(Department of State Revenue; 45 IAC 1.3-8-2)*

45 IAC 1.3-8-3 Account or final report of fiduciary

Authority: IC 6-8.1-3-3

Affected: IC 6-2.3-8-3

Sec. 3. (a) No court may allow or approve any final report of account of:

- (1) a receiver;
- (2) a trustee in dissolution;
- (3) a trustee in bankruptcy;
- (4) a commissioner appointed for the sale of real estate; or
- (5) any other officer acting under the authority and supervision of a court;

unless the account or final report shows, and the court finds, that all utility receipts tax due has been paid and that all utility receipts tax that may become due is secured by bond, deposit, or otherwise.

(b) A fiduciary described in subsection (a) shall provide proof to a court that all utility receipts tax has been paid and that any required security has been provided. The fiduciary shall request the department to issue a certificate of clearance certifying that all utility receipts tax that is due and payable has been paid and that any required security has been provided. The certificate shall be issued by the department within thirty (30) days after request. When issued, the certificate is conclusive proof that no utility receipts tax is due and that any required security has been provided.

(c) If the department fails to issue a certificate of clearance under subsection (b) within thirty (30) days after request, a fiduciary may provide evidence to a court that demonstrates that no utility receipts tax is due and that any required security has been provided. Upon approval by the court, such evidence is conclusive proof of payment of the tax imposed by this article.

(d) Any utility receipts tax liability owed by a fiduciary is a preferred claim and has priority over all other claims except claims for judicial costs and costs of administration.

(Department of State Revenue; 45 IAC 1.3-8-3)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 4, 2004 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Conference Center Room 4, Indianapolis, Indiana the Department of State Revenue will hold a public hearing on proposed new rules concerning the utility receipts tax. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N248 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Kenneth L. Miller

Commissioner

Department of State Revenue

TITLE 68 INDIANA GAMING COMMISSION

Proposed Rule

LSA Document #04-102

DIGEST

Amends 68 IAC 2-6-49, 68 IAC 2-7-12, 68 IAC 5-3-2, 68 IAC 5-3-7, 68 IAC 8-1-11, 68 IAC 8-2-29, 68 IAC 9-4-8, 68 IAC 11-1-8, 68 IAC 12-1-15, 68 IAC 15-1-8, 68 IAC 16-1-16, 68 IAC 17-1-5, 68 IAC 17-2-6, and 68 IAC 18-1-6 to correct a mistake in an internal cross reference. Amends 68 IAC 10-1-5 to require that riverboat licensees may not have or display maximum live gaming jackpots. Amends 68 IAC 11-3-1 to provide that the bill validator report shall be generated after the completion of the soft count rather than before the commencement of the soft count. Amends 68 IAC 14-4-8 to provide that the riverboat licensee shall receive written approval from the commission for all chip destruction and that the riverboat licensee shall coordinate the movement and shipment of chips to be destroyed with commission agents. Amends 68 IAC 14-5-6 to provide that the riverboat licensee shall receive written approval from the commission for all token destruction and that the riverboat licensee shall coordinate the movement and shipment of tokens to be destroyed with commission agents. Amends 68 IAC 15-9-4 to provide that riverboat licensees shall allow the redemption of chips and tokens by employees at one cage located on the riverboat and one location in the pavilion. Amends 68 IAC 15-10-4.1 to require that cage variances be reported on a form approved by the commission, to require that the accounting director or designee must investigate all unresolved variances, and the results of the investigation must be documented on the paperwork provided by the cage department. Adds 68 IAC 15-13-2.5 to require that manually paid jackpots that exceed a value of \$1,199 may not be paid from a pouch or

similar method. Amends 68 IAC 18-1-2 to redefine the time frame within which patrons can expect to receive responses to complaints they have made and to change the requirement that patrons must file a copy of their complaints with the riverboat licensee at the same time they file the complaint with the gaming commission. Effective 30 days after filing with the secretary of state.

68 IAC 2-6-49	68 IAC 14-4-8
68 IAC 2-7-12	68 IAC 14-5-6
68 IAC 5-3-2	68 IAC 15-1-8
68 IAC 5-3-7	68 IAC 15-9-4
68 IAC 8-1-11	68 IAC 15-10-4.1
68 IAC 8-2-29	68 IAC 15-13-2.5
68 IAC 9-4-8	68 IAC 16-1-16
68 IAC 10-1-5	68 IAC 17-1-5
68 IAC 11-1-8	68 IAC 17-2-6
68 IAC 11-3-1	68 IAC 18-1-2
68 IAC 12-1-15	68 IAC 18-1-6

SECTION 1. 68 IAC 2-6-49 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-6-49 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33; IC 5-14-1.5-6.1

Sec. 49. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to this rule to the commission at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1. (*Indiana Gaming Commission; 68 IAC 2-6-49; filed Jan 17, 1996, 11:00 a.m.: 19 IR 1311; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

SECTION 2. 68 IAC 2-7-12 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-7-12 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33; IC 5-14-1.5-6.1

Sec. 12. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to associated equipment at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1. The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 2-7-12; filed Jun 23, 1995, 2:30 p.m.: 18 IR 2656; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

SECTION 3. 68 IAC 5-3-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 5-3-2 Commission approval required; approval process

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33-4-21

Sec. 2. (a) A riverboat licensee, riverboat license applicant, or affiliate thereof may not enter into any debt transaction without receiving the approval of the commission.

(b) A riverboat licensee, riverboat license applicant, or affiliate thereof shall submit, in writing, a request for approval of a debt transaction. The procedure shall be as follows:

(1) The request for approval must be submitted at least ten (10) days before a scheduled meeting of the commission. The executive director shall place the request for approval of a debt transaction on the agenda of the commission meeting to be held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5**.

(2) A representative of the riverboat licensee, riverboat license applicant, or affiliate thereof shall be present at the commission meeting to answer any questions posed by the commission or the executive director.

(3) The approval of the debt transaction will be discussed, and a decision issued by the commission, at the next business meeting of the commission held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5**.

(c) The request for approval of a debt transaction shall contain, at a minimum, the following information:

(1) The names and addresses of all parties to the debt transaction.

(2) The amount of the funds involved.

(3) The type of debt transaction.

(4) The source of the monies obtained by the riverboat licensee, riverboat license applicant, or affiliate thereof.

(5) All sources of collateral.

(6) The purpose of the debt transaction.

(7) The terms of the debt transaction.

(8) All filings that must be submitted to any regulatory agency in association with the debt transaction.

(9) An executive summary of the debt transaction.

(10) A legal opinion that the debt transaction does not violate IC 4-33-4-21.

(11) Any other information deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.

(*Indiana Gaming Commission; 68 IAC 5-3-2; filed Jul 18, 1996, 8:55 a.m.: 19 IR 3300; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 4. 68 IAC 5-3-7 IS AMENDED TO READ AS FOLLOWS:

68 IAC 5-3-7 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 7. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to debt transactions at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5**. The commission may direct the executive director to take additional or different action. (*Indi-*

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ana Gaming Commission; 68 IAC 5-3-7; filed Jul 18, 1996, 8:55 a.m.; 19 IR 3301; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)

SECTION 5. 68 IAC 8-1-11 IS AMENDED TO READ AS FOLLOWS:

68 IAC 8-1-11 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-9-2

Affected: IC 4-33-4; IC 4-33-5; IC 4-33-6; IC 4-33-9; IC 5-14-1.5-6.1

Sec. 11. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to excursions and excursion schedules at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1(b). The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 8-1-11; filed Jul 18, 1996, 9:05 a.m.: 19 IR 3294; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

SECTION 6. 68 IAC 8-2-29 IS AMENDED TO READ AS FOLLOWS:

68 IAC 8-2-29 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33; IC 5-14-1.5-6.1

Sec. 29. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to an emergency response plan at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1. The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 8-2-29; filed Jun 23, 1995, 2:30 p.m.: 18 IR 2663; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

SECTION 7. 68 IAC 9-4-8 IS AMENDED TO READ AS FOLLOWS:

68 IAC 9-4-8 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2

Affected: IC 4-33; IC 5-14-1.5-6.1

Sec. 8. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to an emergency response plan at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1. The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 9-4-8; filed Jun 23, 1995, 2:30 p.m.: 18 IR 2673; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

SECTION 8. 68 IAC 10-1-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 10-1-5 Table limits

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 5. (a) The rules of the game submitted by the riverboat licensee or riverboat license applicant will require an indication of the table limits that will be established by the riverboat licensee for each table.

(b) A riverboat licensee may amend the minimum and maximum wager at any table, so long as the new maximum wager is not above the house maximum wager for that game. The minimum and maximum wagers of a table shall be amended by taking the following actions:

- (1) Posting a sign at the gaming table advising patrons of the new minimum and maximum wagers in effect for that table.
- (2) Advising patrons at the table of the change.

(c) A riverboat licensee may raise the house limit for individual patrons by following procedures for lifting such limits that have been submitted with the rules of the game and approved in accordance with this rule.

(d) A riverboat licensee may only limit live gaming maximum jackpots by limiting wager amount. (*Indiana Gaming Commission; 68 IAC 10-1-5; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2256; errata filed Jun 20, 1996, 1:15 p.m.: 19 IR 3114; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 9. 68 IAC 11-1-8 IS AMENDED TO READ AS FOLLOWS:

68 IAC 11-1-8 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 8. The executive director shall report any action he or she has taken or contemplates taking under this article with respect to internal control procedures to the commission at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5**. The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 11-1-8; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2263; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 10. 68 IAC 11-3-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 11-3-1 General provisions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 1. (a) The following definitions apply throughout this rule:

- (1) "Bill validator report" means a report completed by the soft count team that documents the value of the currency collected from the bill validator drop boxes. The report shall

be completed on a form prescribed or approved by the commission and shall include the currency count by denomination and the total amount of currency removed from the bill validator drop boxes.

(2) “Bill validator verification report” means a report generated ~~before~~ **after the commencement completion** of the soft count that documents the amount and denomination of the currency that was deposited into a bill validator of an electronic gaming device. The report shall be completed on a form prescribed or approved by the commission and shall include, at a minimum, the following information:

- (A) The electronic gaming device from which the bill validator drop box was removed.
- (B) The total dollar value of all the currency contained in the bill validator drop box.
- (C) The number and denomination of each bill contained in the bill validator drop box.

(3) “Currency collection team” means a team of the riverboat licensee’s employees that consists of at least three (3) occupational licensees, at least one (1) of whom is a security officer. The currency collection team shall be responsible for collecting the drop boxes at least one (1) time per day and placing empty drop boxes on the live gaming devices and in each bill validator.

(4) “Drop box” means the live gaming device drop boxes or bill validator drop boxes.

(5) “Drop box storage cart” means the cart, equipped with a secured compartment, utilized to transport drop boxes during the currency collection process.

(6) “Drop box verification report” means a report generated before the commencement of the soft count that documents the activity that took place at each live gaming device for the gaming day. The report shall be completed on a form prescribed or approved by the commission and shall include, at a minimum, the following information:

- (A) The opening dollar amount of each live gaming device inventory.
- (B) The identifying number and dollar amount of each live gaming device fill slip.
- (C) The total dollar amount of table fill slips.
- (D) The identifying number and dollar amount of each live gaming device credit slip.
- (E) The total dollar amount of live gaming device credit slips.
- (F) The closing dollar amount of each live gaming device inventory.
- (G) The identifying number and dollar amount of each counter check.
- (H) The total dollar amount of counter checks.
- (I) The identifying number and dollar amount of each front money withdrawal.
- (J) The total dollar amount of front money withdrawals.

(7) “Master gaming report” means a report completed by the soft count team that documents the value of the currency collected from the drop boxes of the live gaming devices. The

report shall be completed on a form prescribed or approved by the commission and shall include, at a minimum, the following information:

- (A) The total amount of the opening live gaming device inventories.
- (B) The total amount of the table fill slips.
- (C) The total amount of the table credit slips.
- (D) The total amount of closing table game inventories.
- (E) The total amount of counter checks.
- (F) The total amount of front money withdrawals.
- (G) The total amount of currency, tokens, and chips removed from live gaming device drop boxes.
- (H) The total win or loss.

(8) “Recorder” means the member of the soft count team responsible for ensuring that the paperwork reconciles. The recorder shall not be responsible for completing the table count slips.

(9) “Soft count team” means a team of the riverboat licensee’s employees that consists of at least:

- (A) one (1) employee of the soft count department;
- (B) one (1) soft count supervisor; and
- (C) one (1) employee of the accounting department.

The soft count team shall be responsible for counting and bundling the currency collected from the live gaming devices and bill validators.

(b) Members of the currency collection team and soft count team shall wear clothing that is not conducive to the concealment of currency. Members of the currency collection team and soft count team shall not wear hats.

(c) The currency collection team and the soft count team shall be rotated on a routine basis to ensure the integrity of the currency collection process and the soft count. Members of the currency collection team can be members of the soft count team.

(d) On the last day of each month, the riverboat licensee shall drop each bill validator and complete a reconciliation of that month’s soft drop. (*Indiana Gaming Commission; 68 IAC 11-3-1; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3322; filed Jan 30, 1998, 11:00 a.m.: 21 IR 2060; filed May 29, 1998, 5:10 p.m.: 21 IR 3697; filed Jun 19, 2000, 10:34 a.m.: 23 IR 2699; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

SECTION 11. 68 IAC 12-1-15 IS AMENDED TO READ AS FOLLOWS:

68 IAC 12-1-15 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33; IC 5-14-1.5-6.1

Sec. 15. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to this rule to the commission at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1. (*Indiana Gaming Commission; 68 IAC*

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12-1-15; filed Feb 13, 1996, 5:30 p.m.: 19 IR 1563; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)

SECTION 12. 68 IAC 14-4-8 IS AMENDED TO READ AS FOLLOWS:

68 IAC 14-4-8 Destruction of chips

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 8. (a) **The riverboat licensee must have written authorization from the executive director or his or her designee to destroy value or nonvalue chips.** The riverboat licensee or riverboat license applicant shall notify the executive director, in writing, at least ten (10) days before value or nonvalue chips are destroyed. The riverboat licensee or riverboat license applicant shall notify the executive director of the following information:

- (1) The date and time that the chips will be destroyed.
- (2) The location at which the chips will be destroyed.
- (3) The denomination, number, and amount of value chips that will be destroyed.
- (4) The description and number of nonvalue chips that will be destroyed.
- (5) A detailed explanation of the method of destruction.

~~(b) Unless otherwise approved by the executive director, at least two (2) people, one (1) of whom is an agent of the commission, shall be present when the chips are destroyed.~~

~~(c) (b) After destruction of the value chips, the denomination, number, and amount of value chips destroyed shall be entered in the chip inventory ledger in accordance with 68 IAC 15-4.~~

~~(d) (c) After destruction of the nonvalue chips, the description and number of nonvalue chips destroyed shall be entered in the chip inventory ledger in accordance with 68 IAC 15-4.~~

~~(e) Unless the executive director notifies (d) The riverboat licensee or riverboat license applicant within five (5) days of the receipt of the letter set forth in subsection (a), the method of destruction will be deemed shall coordinate the movement and shipment of chips to be destroyed with commission agents on a form approved by the commission. (Indiana Gaming Commission; 68 IAC 14-4-8; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2273; errata filed May 7, 1997, 4:00 p.m.: 20 IR 2413; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)~~

SECTION 13. 68 IAC 14-5-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 14-5-6 Destruction of tokens

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 6. (a) **The riverboat licensee must have written authorization from the executive director or his or her designee to destroy any tokens.** The riverboat licensee or riverboat license applicant shall notify the executive director, in writing, at least ten (10) days before tokens are destroyed. The riverboat licensee or riverboat license applicant shall notify the executive director of the following information:

- (1) The date and time that the tokens will be destroyed.
- (2) The location at which the tokens will be destroyed.
- (3) The denomination, number, and amount of tokens that will be destroyed.
- (4) **The description and number of tokens that will be destroyed.**
- ~~(4) (5) A detailed explanation of the method of destruction.~~

~~(b) Unless otherwise approved by the executive director, at least two (2) people, one (1) of whom is an agent of the commission, shall be present when the tokens are destroyed.~~

~~(c) (b) After destruction of the tokens, the denomination, number, and amount of tokens destroyed shall be entered in the token inventory ledger in accordance with 68 IAC 15-4.~~

~~(d) Unless the executive director notifies (c) The riverboat licensee or riverboat license applicant within five (5) days of the receipt of the letter set forth in subsection (a), the method of destruction will be deemed shall coordinate the movement and shipment of tokens to be destroyed with commission agents on a form approved by the commission. (Indiana Gaming Commission; 68 IAC 14-5-6; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2275; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)~~

SECTION 14. 68 IAC 15-1-8 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-1-8 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33; IC 5-14-1.5-6.1

Sec. 8. The executive director shall report any action he or she has taken or contemplates taking under this article to the commission at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1. The commission may direct the executive director to take additional or different action. *(Indiana Gaming Commission; 68 IAC 15-1-8; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3044; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)*

SECTION 15. 68 IAC 15-9-4 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-9-4 Chips and tokens redeemed by nongaming occupational licensees

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 4. (a) The riverboat licensee shall establish and submit policies and procedures for the redemption of chips and tokens received by nongaming occupational licensees as tips and gratuities or as payment for food and beverages. The riverboat licensee shall allow the redemption of chips and tokens by occupational licensees at only one (1) cage ~~on only one (1) level of location on the riverboat~~ **and one (1) cage location in the pavilion.**

(b) A nongaming occupational license redemption log will be maintained to document the redemption of all chips and tokens by nongaming employees. This log shall include, at a minimum, the following:

- (1) Nongaming occupational licensee name.
- (2) Nongaming occupational licensee number.
- (3) Title of the occupational licensee.
- (4) Date and time.
- (5) Dollar amount of chips redeemed.
- (6) Dollar amount of tokens redeemed.
- (7) Total dollar amount of chips and tokens redeemed.
- (8) Any other information deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.

(Indiana Gaming Commission; 68 IAC 15-9-4; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3336; filed Mar 21, 1997, 10:00 a.m.: 20 IR 2098; filed Jul 10, 2000, 4:48 p.m.: 23 IR 3070; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)

SECTION 16. 68 IAC 15-10-4.1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-10-4.1 Cage variances

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 4.1. (a) All cage inventories must be accurately reported at the conclusion of each shift on the inventory form utilized by the riverboat licensee. All overages and shortages must be recorded at the conclusion of the shift during which the variance was discovered.

(b) All cage variances of five hundred dollars (\$500) or two percent (2%), whichever is less, must be reported **on a form approved by the commission** to the following within one (1) business day after the discovery of the variance:

- (1) The security department.
- (2) The surveillance department.
- (3) A commission agent.

(c) All variances of five thousand dollars (\$5,000) or more or a variance of any amount that is of a nature that indicates criminal activity must be reported **on a form approved by the commission** to the following immediately:

- (1) The security department.
- (2) The surveillance department.
- (3) A commission agent.

These variances must be reported to the commission audit staff at the beginning of the next business day.

(d) All variances of five hundred dollars (\$500) or two percent (2%), whichever is less, or any variance that is of a nature that indicates criminal activity must be investigated by the riverboat licensee. The variance and the results of the investigation must be reported to the head of the accounting department or the equivalent. **All unresolved variances must be investigated by the accounting director or designee. The results of the investigation shall be reported on the document provided to him or her by the cage department.** Any surveillance tapes or records relating to the variance must be preserved and retained by the riverboat licensee until the regional audit administrator for the commission advises the tapes or records, or both, may be recycled. The results of any investigation into these variances must be reported to a commission agent. If the variance that was investigated exceeded five thousand dollars (\$5,000), the results of the investigation must also be reported to the commission audit staff.

(e) The riverboat licensee's internal auditor must review, on a quarterly basis, cage variances to ensure that the variances are appropriately and thoroughly investigated and reported. The results of the internal auditor's review must be reflected on the quarterly internal audit report filed in accordance with 68 IAC 15-8. *(Indiana Gaming Commission; 68 IAC 15-10-4.1; filed Jun 19, 2000, 10:34 a.m.: 23 IR 2702; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)*

SECTION 17. 68 IAC 15-13-2.5 IS ADDED TO READ AS FOLLOWS:

68 IAC 15-13-2.5 Pouch pay jackpots

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2.5. (a) In accordance with 68 IAC 15-1-3, a riverboat licensee or riverboat license applicant must submit policies and procedures covering pouch pay jackpot winnings.

(b) No jackpot in excess of one thousand one hundred ninety-nine dollars and ninety-nine cents (\$1,199.99) may be paid as a pouch pay jackpot. *(Indiana Gaming Commission; 68 IAC 15-13-2.5)*

SECTION 18. 68 IAC 16-1-16 IS AMENDED TO READ AS FOLLOWS:

68 IAC 16-1-16 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-9-2
Affected: IC 4-33-4; IC 4-33-5; IC 4-33-6; IC 4-33-9; IC 5-14-1.5-6.1

Sec. 16. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to excursions and excursion schedules at the next

meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1. The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 16-1-16; filed Jul 18, 1996, 8:55 a.m.; 19 IR 3316; readopted filed Nov 25, 2002, 10:11 a.m.; 26 IR 1261*)

SECTION 19. 68 IAC 17-1-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 17-1-5 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 5. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to the transportation of electronic gaming devices to the commission at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5**. The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 17-1-5; filed Apr 19, 1996, 3:00 p.m.; 19 IR 2277; readopted filed Nov 25, 2002, 10:11 a.m.; 26 IR 1261*)

SECTION 20. 68 IAC 17-2-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 17-2-6 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 6. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect to the movement of live gaming devices to the commission at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5**. The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 17-2-6; filed Jul 3, 1996, 5:00 p.m.; 19 IR 3048; readopted filed Nov 25, 2002, 10:11 a.m.; 26 IR 1261*)

SECTION 21. 68 IAC 18-1-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 18-1-2 Patron dispute process

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 2. (a) The riverboat licensee shall attempt to resolve all patron disputes with the patron.

(b) If the riverboat licensee and the patron cannot resolve the dispute, the riverboat licensee must advise the patron of the patron's right to file a complaint with the commission. The complaint may be:

- (1) received by the commission agent; or
- (2) sent to the commission office in Indianapolis, Indiana.

The riverboat licensee shall provide a patron with a complaint

form upon request.

(c) The complaint shall contain, at a minimum, the following information:

- (1) The name, address, and telephone number of the patron.
- (2) A summary of the nature of the patron complaint, including the date and time on which the incident leading to the dispute occurred.
- (3) A list of the names, if known, of any occupational licensees that were involved in or a witness to the incident that led to the patron dispute.
- (4) The name, address, and telephone number, if known, of any witnesses to the incident that led to the patron dispute.
- (5) A summary of the riverboat licensee's attempt to resolve the patron dispute.
- (6) Any other information deemed necessary by the executive director or the commission.

The patron shall submit the complaint within five (5) business days of the incident that led to the patron dispute. ~~The patron shall provide a copy of the complaint to the riverboat licensee at the same time the patron submits the complaint to the commission.~~

(d) The riverboat licensee shall respond to **the commission regarding** a patron complaint within ~~two (2) business days of receiving a copy of the complaint.~~ **the time period prescribed by the commission.** (*Indiana Gaming Commission; 68 IAC 18-1-2; filed Jul 18, 1996, 8:55 a.m.; 19 IR 3318; readopted filed Nov 25, 2002, 10:11 a.m.; 26 IR 1261*)

SECTION 22. 68 IAC 18-1-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 18-1-6 Reports by the executive director

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33; IC 5-14-1.5-6.1

Sec. 6. The executive director shall report any action he or she has taken or contemplates taking under this rule to the commission at the next meeting held under ~~68 IAC 2-1-5~~ **68 IAC 1-2-5** or an executive session held under IC 5-14-1.5-6.1(b). The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 18-1-6; filed Jul 18, 1996, 8:55 a.m.; 19 IR 3318; readopted filed Nov 25, 2002, 10:11 a.m.; 26 IR 1261*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 22, 2004 at 9:00 a.m., at the Indiana Gaming Commission, 115 West Washington Street, South Tower, Suite 950, Indianapolis, Indiana the Indiana Gaming Commission will hold a public hearing on proposed rules regarding operational functions and internal operations of riverboat licensees and riverboat license applicants. Copies of these rules are now on file at the Indiana Gaming Commission, 115 West Washington Street, South

Tower, Suite 950 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Glenn R. Lawrence
Executive Director
Indiana Gaming Commission

TITLE 68 INDIANA GAMING COMMISSION

Proposed Rule LSA Document #04-103

DIGEST

Amends 68 IAC 1-5-1 to require a riverboat licensee to notify a commission agent and the executive director when the riverboat licensee becomes aware that criminal activity is taking place on riverboat property. Amends 68 IAC 2-3-5 to require an applicant to hold a valid merchant marine document only when required by the United States Coast Guard. Amends 68 IAC 2-3-6 to eliminate the provision requiring the signature of the executive director on identification badges. Amends 68 IAC 2-3-9 to require occupational licensees to provide truthful information to commission agents and staff during an investigation. Effective 30 days after filing with the secretary of state.

68 IAC 1-5-1	68 IAC 2-3-6
68 IAC 2-3-5	68 IAC 2-3-9

SECTION 1. 68 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 1-5-1 Obligation to report certain events

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 1. Any riverboat or supplier licensee shall provide a written notice to the executive director at such time as it becomes aware of the following:

- (1) Any violation or apparent violation of any rule of the commission by any of the following:
 - (A) The riverboat or supplier licensee.
 - (B) Any substantial owner, key person, or employee of the riverboat or supplier licensee.
 - (C) Any person acting, or authorized to act, on behalf of or in furtherance of the interests of the riverboat or supplier licensee or any affiliate of the licensee.
- (2) Any change in status of any owner's license, supplier's license, or the equivalent issued to it or an affiliate by any other governmental entity.
- (3) Any civil litigation filed against the riverboat or supplier licensee.
- (4) Any criminal, civil, or administrative action, threatened action, or investigation initiated by any governmental entity

against the riverboat or supplier licensee.

(5) Any claims made by any governmental entity concerning any tax liability of a licensee or any key person or substantial owner of the licensee.

(6) Any civil, criminal, administrative, or tax action initiated by or against an employee of the riverboat licensee if the action relates to the gaming activity conducted by the riverboat licensee.

(7) Any civil, criminal, administrative, or tax action initiated against a key person, substantial owner, or an affiliate of a riverboat or supplier licensee, if such action relates to a gaming operation under the jurisdiction of any governmental entity.

(8) Any bankruptcy, receivership, or debt adjustment initiated by or against the riverboat or supplier licensee or any affiliate thereof or the licensee's substantial owners.

(9) Any Title 31 compliance review conducted by the Internal Revenue Service. The riverboat or supplier licensee must provide a copy of any compliance review report or the equivalent within ten (10) days of the receipt of the report by the licensee.

(10) Any action, event, or nonevent, with respect to which the executive director has instructed the licensee to provide notice so that the executive director can ensure that the licensee continues to maintain suitability for licensure.

(11) Any apparent criminal activity taking place on riverboat property. This information must also be submitted to a commission agent.

(Indiana Gaming Commission; 68 IAC 1-5-1; filed Jun 23, 1995, 2:30 p.m.: 18 IR 2649; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2247; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)

SECTION 2. 68 IAC 2-3-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-3-5 Licensing procedures

Authority: IC 4-33-4-1; IC 4-33-4-2
Affected: IC 4-33-8-3

Sec. 5. (a) An applicant for an occupational license shall be subject to the following procedures prior to licensing:

- (1) Application.
- (2) Issuance of a temporary identification badge. The temporary identification badge shall serve as the temporary occupational license until the permanent occupational license has been issued or denied.
- (3) Investigation of the applicant.
- (4) If an applicant for an occupational license, Level 1, 2, or 3 has been convicted of a felony under Indiana law, the laws of any other state, or the laws of the United States, the application is automatically denied in accordance with IC 4-33-8-3(2). The executive director shall issue the applicant a notice of denial by certified mail, or the commission agent who receives the completed application may personally deliver a notice of denial to the applicant.
- (5) Action by the commission.

(6) Issuance of a permanent identification badge. The permanent identification badge shall serve as the permanent occupational license.

(7) Different or additional licensing procedures the commission requires of the applicant to ensure the applicant is in compliance with the Act and this title.

(b) Procedures for a temporary occupational license shall be as follows:

(1) An applicant for an occupational license must submit a completed application that has been stamped and signed by the riverboat licensee, the riverboat license applicant, or its authorized agent to the commission agent at the commission's dock site office during times designated by the commission agents.

(2) Once the commission agent has received the completed occupational license application and appropriate fee, the commission agent shall obtain the applicant's fingerprints and photograph. If the application or a criminal record check completed by a commission agent, or both, does not reveal that the applicant has been convicted of a felony under Indiana law, the laws of any other state, or the laws of the United States, the commission agent shall issue the applicant a temporary identification badge.

(3) An applicant who receives a temporary identification badge may work on a riverboat until a permanent license is issued or the temporary identification badge is revoked.

(4) The temporary identification badge shall be a card of a color designated by the executive director and that meets the specifications set forth in section 6 of this rule. The color of the temporary identification badge shall be different from the color of the permanent identification badge.

(5) Temporary identification badges shall be worn by all occupational licensees during work hours. Temporary identification badges shall be clearly displayed.

(6) A fee of ten dollars (\$10) shall be paid to the commission for any necessary replacement of temporary identification badge. The fee shall be assessed each time an occupational licensee obtains a replacement temporary identification badge.

(7) A temporary identification badge shall not be transferred. If the applicant resigns or his or her employment is terminated, the applicant shall return the temporary badge to the commission.

(8) Requirements for the revocation of a temporary identification badge shall include the following:

(A) The executive director, upon written notice to the applicant and the riverboat licensee, may revoke an applicant's temporary badge if the executive director determines that the background investigation reveals that an applicant is not suitable for licensure.

(B) The executive director, or the executive director's designee, upon written notice to the applicant and the riverboat licensee, may revoke an applicant's temporary occupational license if the executive director or the execu-

tive director's designee determines that the applicant has violated the Act or this title, or committed a criminal offense in the performance of the applicant's duties for the riverboat licensee.

(C) If an applicant's temporary identification badge is revoked, the applicant shall not be permitted to work for any riverboat gambling operation at duties that are to be performed on a riverboat.

(D) If an applicant's temporary identification badge is revoked, the application shall be forwarded to the commission for action unless the applicant withdraws the application prior to commission action.

(9) An applicant must comply with all requests for information, documents, or other materials relating to the applicant and his or her application during the investigation conducted by the commission.

(c) The applicant shall meet the following standards, qualifications, or criteria to be issued an occupational license of any level:

(1) The applicant must possess the qualifications set forth in IC 4-33-8-3.

(2) The applicant must demonstrate a level of skill, experience, or knowledge necessary to perform the job that the applicant will perform.

(3) An applicant whose knowledge, experience, and skill are derived solely from the completion of an occupational training school that is not in compliance with 68 IAC 2-5 shall not be considered to have the requisite skill, experience, or knowledge necessary to conduct gambling games. An applicant who has completed an occupational training school that is not in compliance with 68 IAC 2-5 may be hired if the riverboat licensee will provide the appropriate training.

(4) The applicant must not have been convicted of any offense involving violation of a gaming law in any jurisdiction.

(5) The applicant's name must not appear on the exclusion list of any jurisdiction.

(6) The applicant must never have had a gaming license suspended or revoked in any jurisdiction.

(7) An applicant who will serve alcoholic beverages must hold the appropriate permits from the alcoholic beverage commission.

(8) An applicant whose duties will be to operate or navigate the riverboat must hold the appropriate licenses or merchant marine documents, or both, from the United States Coast Guard.

(9) An applicant who will work on a riverboat that is docked on the waters of Lake Michigan must hold a valid merchant marine document ~~from~~ **only when required** by the United States Coast Guard.

(10) An applicant whose duties will be to operate or navigate the riverboat must not have violated any criminal statute involving drugs or alcohol, or both, in any jurisdiction.

(11) An applicant must not be currently abusing drugs or

alcohol, or both.

- (12) An applicant must be twenty-one (21) years of age.
- (13) An applicant must be in substantial compliance with all state and federal tax laws.
- (14) An applicant must be of good moral character and reputation.
- (15) An applicant must meet any other standard that the commission deems necessary to ensure compliance with the Act and this title after publication of the standard.

(d) The commission may place restrictions or conditions on a temporary occupational license. The applicant must comply with these restrictions or conditions before the commission issues an occupational license. These restrictions or conditions may include, but are not limited to, the following:

- (1) That the applicant demonstrates a level of skill, experience, or knowledge necessary to perform the job that the applicant will perform.
- (2) That the applicant who will serve alcoholic beverages holds the appropriate permits from the alcoholic beverage commission.
- (3) That the applicant who will operate or navigate the riverboat holds the appropriate license or merchant marine documents, or both, from the United States Coast Guard.

The occupational licensee must continue to meet all conditions or restrictions for licensure after the issuance of the permanent occupational license. If an occupational licensee fails to adhere to these conditions or restrictions or fails to maintain suitability for licensure, the commission may initiate a disciplinary action under 68 IAC 13.

(e) Action of the commission shall be as follows:

(1) After the background investigation has been completed, if the commission finds that the applicant is suitable to receive an occupational license, the commission shall direct the executive director to issue the applicant an occupational license upon the payment of the applicant's occupational license fee. The permanent identification badge shall serve to represent the permanent occupational license. If the applicant's occupational license fee is not received by the commission within ten (10) business days after the date of the mailing of the notification of the applicant's suitability for licensing to the applicant and the riverboat licensee, the executive director shall revoke the applicant's temporary identification badge and notify the commission that the temporary identification badge has been revoked.

(2) If the commission determines that the applicant is not suitable to receive an occupational license, it shall:

- (A) direct the executive director to issue the applicant a notice of denial by personal delivery or certified mail;
- (B) immediately revoke the temporary license; and
- (C) notify the appropriate riverboat licensee of the revocation of the temporary license.

(f) Requirements for a permanent identification badge shall

be as follows:

(1) Upon a finding of suitability for licensure, the commission shall issue an occupational license in the form of a permanent identification badge.

(2) The permanent identification badge shall remain the property of the commission at all times. The occupational license may be:

- (A) revoked;
- (B) suspended;
- (C) canceled; or
- (D) restricted;

by the commission in accordance with 68 IAC 13. The commission may refuse to renew the license when it is reviewed under section 8 of this rule.

(3) Neither the occupational license number nor the permanent identification badge shall be transferred to another person. If the occupational licensee resigns or the occupational licensee's employment is terminated, the occupational licensee shall return the permanent identification badge to the commission.

(4) The permanent identification badge shall be a card of a color designated by the executive director and that meets the specifications set forth in section 6 of this rule. The color of the permanent identification badge shall be different from the color of the temporary identification badge.

(5) The permanent identification badge shall be worn by all occupational licensees during work hours. Permanent identification badges shall be clearly displayed.

(6) A fee of ten dollars (\$10) shall be paid to the commission for any necessary replacement of a permanent identification badge. The fee shall be assessed each time an occupational licensee obtains a replacement permanent identification badge.

(Indiana Gaming Commission; 68 IAC 2-3-5; filed Nov 10, 1994, 11:00 a.m.: 18 IR 497; filed Jan 30, 1998, 11:00 a.m.: 21 IR 2056; filed May 29, 1998, 5:12 p.m.: 21 IR 3704; errata filed Aug 12, 1998, 3:58 p.m.: 22 IR 125; filed Dec 29, 1998, 10:46 a.m.: 22 IR 1418; errata filed Jan 11, 1999: 3:54 p.m.: 22 IR 1525; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1061)

SECTION 3. 68 IAC 2-3-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-3-6 Identification badge

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33-8

Sec. 6. The identification badge shall be a card of the appropriate color ~~which~~ **that** meets the following requirements:

(1) The front side of the identification badge shall:

- (A) be a card bearing the name and logo of the riverboat gambling operation;
- (B) display the applicant's photograph;
- (C) display the applicant's first name and job title;

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(D) display the occupational license number assigned by the commission;

(E) display the level of the occupational license; **and**

~~(F) display the signature of the executive director; and~~

~~(G)~~ (F) display the date the identification badge and occupational license were issued and the date that the identification badge and occupational license will expire.

(2) The back side of the identification badge shall:

(A) display the applicant's first name and last name;

(B) display the applicant's signature;

(C) display the applicant's date of birth;

(D) have a magnetic stripe on the bottom of the card that shall be capable of:

(i) revealing the applicant's security clearance levels;

(ii) tracking the applicant's employment attendance; and

(iii) tracking the applicant's ingress and egress on the riverboat through the employee entrances; and

(E) display any other information deemed necessary by the commission to identify the occupational licensee, the riverboat of employment, the appropriate level of occupational license, and any conditions or restrictions that have been placed on the occupational license.

(3) Identification badges shall be constructed so that the badges can be easily affixed to the occupational licensee's clothing.

(4) The temporary and permanent badges shall remain the property of the commission at all times. The temporary and permanent badges may be:

(A) revoked;

(B) suspended;

(C) canceled; or

(D) restricted;

by the commission in accordance with 68 IAC 13. The commission may refuse to renew the license when it is reviewed under section 8 of this rule.

(5) The temporary and permanent badges shall not be transferred. If the applicant resigns or his or her employment is terminated, the applicant shall return the temporary or permanent badge to the commission.

(Indiana Gaming Commission; 68 IAC 2-3-6; filed Nov 10, 1994, 11:00 a.m.: 18 IR 499; filed Jun 1, 1998, 2:48 p.m.: 21 IR 3706; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)

SECTION 4. 68 IAC 2-3-9 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-3-9 Duty to maintain suitability; duty to disclose

Authority: IC 4-33-4-1; IC 4-33-4-2

Affected: IC 4-33

Sec. 9. (a) All occupational licensees have a continuing duty to maintain suitability for licensure. An occupational license does not create a property right, but is a revocable privilege granted by the state contingent upon continuing suitability for licensure.

(b) Riverboat licensees shall notify the commission that an occupational licensee is in violation of the requirements of this rule or IC 4-33 if the riverboat licensee is aware of the violation.

(c) Occupational licensees shall notify the commission of any changes in the information submitted in the application or any information ~~which~~ **that** could render the licensee ineligible to hold an occupational license.

(d) Occupational licensees shall cooperate with and provide truthful information to commission agents and staff during any investigation regarding criminal activity or regulatory violations, or both.

~~(d)~~ (e) Occupational licensees must notify the commission that a riverboat licensee, a supplier licensee, or an occupational licensee has violated the Act or this title as soon as the occupational licensee becomes aware of the violation. If an occupational licensee fails to notify the commission of a violation of the Act or this title by a riverboat licensee, a supplier licensee, or an occupational licensee, the commission may initiate a disciplinary action. *(Indiana Gaming Commission; 68 IAC 2-3-9; filed Nov 10, 1994, 11:00 a.m.: 18 IR 500; filed Aug 20, 1997, 7:11 a.m.: 21 IR 11; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 22, 2004 at 9:00 a.m., at the Indiana Gaming Commission, 115 West Washington Street, South Tower, Suite 950, Indianapolis, Indiana the Indiana Gaming Commission will hold a public hearing on proposed amendments regarding issues surrounding occupational licensees of riverboat licensees and riverboat license applicants. Copies of these rules are now on file at the Indiana Gaming Commission, 115 West Washington Street, South Tower, Suite 950 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Glenn R. Lawrence

Executive Director

Indiana Gaming Commission

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule

LSA Document #04-66

DIGEST

Adds 312 IAC 6.2, concerning management of the Great Lakes basin, to identify the department of natural resources, division of water, as the entity to coordinate state functions

pertaining to IC 14-25-1-11 and 42 U.S.C. 1962d-20 ("Water Resources Development Act") and water diversions from the Great Lakes drainage basin and to provide that the director of the department issues orders appropriate to implementation of the article. Effective January 1, 2005.

312 IAC 6.2

SECTION 1. 312 IAC 6.2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6.2. GREAT LAKES BASIN WATER MANAGEMENT

Rule 1. Administration

312 IAC 6.2-1-1 Purposes

Authority: IC 14-10-2-4; IC 14-25-1-11

Affected: IC 14-25-1

Sec. 1. The purposes of this article are to assist with each of the following:

- (1) Implementation and administration of IC 14-25-1-11.
- (2) Execution of the state's responsibilities under subsection (d) of 42 U.S.C. 1962d-20 (the "Water Resources Development Act").
- (3) Evaluation of water diversions from the Great Lakes drainage basin.

(Natural Resources Commission; 312 IAC 6.2-1-1)

312 IAC 6.2-1-2 "Division" defined

Authority: IC 14-10-2-4; IC 14-25-1-11

Affected: IC 14-25-1

Sec. 2. As used in this article, "division" means the division of water of the department. *(Natural Resources Commission; 312 IAC 6.2-1-2)*

312 IAC 6.2-1-3 Administration by the department's division of water

Authority: IC 14-10-2-4; IC 14-25-1-11

Affected: IC 14-10-2-3; IC 14-25-1

Sec. 3. (a) The division shall serve as the point of contact and shall coordinate the administrative, professional, and technical functions of this article.

(b) Subject to IC 14-10-2-3, the department director shall issue any order appropriate to the implementation of this article. *(Natural Resources Commission; 312 IAC 6.2-1-3)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 26, 2004 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed new rules concerning management of the

Great Lakes basin, to identify the department of natural resources, division of water, as the entity to coordinate state functions pertaining to IC 14-25-1-11 and 42 U.S.C. 1962d-20 ("Water Resources Development Act") and water diversions from the Great Lakes drainage basin, and to provide that the director of the department issues orders appropriate to implementation of the article. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley

Chairman

Natural Resources Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule

LSA Document #03-228

DIGEST

Adds 326 IAC 1-2-52.2, 326 IAC 1-2-52.4, and 326 IAC 1-2-82.5 and amends 326 IAC 1-2-52 and 326 IAC 1-3-4 concerning particulate matter definitions and standards. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: September 1, 2003, Indiana Register (26 IR 3961).

Second Notice of Comment Period: January 1, 2004, Indiana Register (27 IR 1301).

Change of Notice of First Hearing: February 1, 2004, Indiana Register (27 IR 1613).

Change of Notice of First Hearing: March 1, 2004, Indiana Register (27 IR 1936).

Date of First Hearing: May 5, 2004.

Change of Notice of First Hearing: June 1, 2004, Indiana Register (27 IR 1301).

Opened and Continuation of First Hearing: June 2, 2004.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on January 1, 2004, at 27 IR 1301. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

The proposed rule contains numerous changes from the draft rule that make the proposed rule so substantively different from the draft rule that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed

rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#03-228 Particulate Matter

Gayl Killough

c/o Administrative Assistant

Rule Development Section

Office of Air Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the Office of Air Quality, Tenth Floor East, 100 North Senate Avenue, Indianapolis, Indiana. Comments may also be submitted by facsimile to (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by July 21, 2004.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2004, through February 2, 2004, on IDEM's draft rule language. IDEM received comments from the following parties:

David R. Webb Company, Inc. (DW)

Hoosier Energy (HE)

NIPSCO (NP)

Following is a summary of the comments received and IDEM's responses thereto:

General

Comment: The draft rule language for the PM_{2.5} standard should be corrected where it refers to a 24-hour standard of fifteen (15) micrograms per cubic meter, rather than sixty-five (65). (HE) (NP)

Comment: For the SO₂ national ambient air quality standards, we recommend that IDEM language to incorporate the term "calendar year" related to the annual arithmetic mean, clarify the 24-hour standard, and the 3-hour standard.

Comment: For nitrogen dioxide ambient air quality standards, the concentration should be changed from 0.05 to 0.053. This will prevent a discrepancy between the 100 ug/m³ value as listed as the standard and the 94 ug/m³ value that will be calculated if converting from 0.05 ppm using the 1,880 ug/m³ = one (1) ppm conversion factor listed in 326 IAC 1-3-4(b)(5)(B). (NP)

Response: IDEM has clarified the existing rule language.

Comment: For the ambient air quality standards in 326 IAC 1-3-4, we recommend consistency in formatting. (NP)

Response: IDEM has updated rule language to be consistent in formatting as recommended while still consistent with Legislative Service Agency style.

Subject of a Future Rulemaking

Comment: IDEM should not change the definition of particulate matter that eliminates the "aerodynamic diameter smaller than one hundred (100) micrometers". (DW)(HE)

Comment: We question the need to include emission definitions in state rules. The emission definitions should not be added without careful analysis of its impact to other state rules. (NP)

Comment: The emission definitions should be modified to indicate

that each emission definition relates directly to the corresponding particulate matter and redundant language should be removed. (HE) (NP)

Comment: The emission definitions would include all that is in the ambient air, regardless of source, that is measured by ambient air monitoring equipment. Therefore, we recommend there be some clarification included in the emission definitions that the discharge is to ambient air. (NP)

Comment: We recommend the measurement methods be listed outside the emission definitions in a separate section of 326 IAC. (NP)

Comment: We recommend that the definition of TSP be deleted because there is no national ambient air quality standard for TSP. (NP)

Comment: We request that IDEM include in its rulemaking notices citations for federal regulatory language proposed for inclusion in state rules. (NP)

Response: The department has revised the draft rule to limit the amendments to incorporating the new federal standards for PM_{2.5}, adding the federal definition of PM_{2.5}, and clarifying the SO₂ and the NO₂ standards. Other issues that were identified in the first and second notices may be addressed in a future separate rulemaking or within other current rulemakings.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 2, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rules 326 IAC 1-2-52.2, 326 IAC 1-2-52.4, and 326 IAC 1-2-82.5 and amendments of 326 IAC 1-2-52 and 326 IAC 1-3-4. No comments were made at the first hearing.

326 IAC 1-2-52

326 IAC 1-2-52.2

326 IAC 1-2-52.4

326 IAC 1-2-82.5

326 IAC 1-3-4

SECTION 1. 326 IAC 1-2-52 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-52 "Particulate matter" defined

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 52. "Particulate matter" means any airborne finely divided solid or liquid material, excluding uncombined water, with an aerodynamic diameter smaller than one hundred (100) micrometers (µm).

(1) ~~PM₁₀~~: Any particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (µm) as measured by an applicable reference method specified in 40 CFR Part 50 or by an equivalent or alternative method approved by the commissioner.

(2) Total suspended particulate (TSP): Any particulate matter as measured by the method described in Appendix B of 40 CFR Part 50.

(Air Pollution Control Board; 326 IAC 1-2-52; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2374; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3020)

SECTION 2. 326 IAC 1-2-52.2 IS ADDED TO READ AS FOLLOWS:

326 IAC 1-2-52.2 “PM_{2.5}” defined

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 52.2. “PM_{2.5}” means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (2.5) micrometers (µm). (*Air Pollution Control Board; 326 IAC 1-2-52.2*)

SECTION 3. 326 IAC 1-2-52.4 IS ADDED TO READ AS FOLLOWS:

326 IAC 1-2-52.4 “PM₁₀” defined

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 52.4. “PM₁₀” means any particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (µm) as measured by an applicable reference method specified in 40 CFR Part 50 or by an equivalent or alternative method approved by the commissioner. (*Air Pollution Control Board; 326 IAC 1-2-52.4*)

SECTION 4. 326 IAC 1-2-82.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 1-2-82.5 “Total suspended particulate” or “TSP” defined

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 82.5. “Total suspended particulate” or “TSP” means any particulate matter as measured by the method described in Appendix B of 40 CFR Part 50. (*Air Pollution Control Board; 326 IAC 1-2-82.5*)

SECTION 5. 326 IAC 1-3-4, AS AMENDED AT 27 IR 2224, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-3-4 Ambient air quality standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 4. (a) The following ambient All measurements of air quality that are expressed as mass per unit volume, micrograms per cubic meter (µg/m³), other than for the particulate matter (PM₁₀ and PM_{2.5}) standards, shall be corrected to a reference temperature of twenty-five (25) degrees Celsius and to a reference pressure of seven hundred sixty (760) millimeters of mercury (one thousand thirteen and two-tenths (1,013.2) millibars), as micrograms per cubic meter (µg/m³). Measurements of PM₁₀ and PM_{2.5}, for purposes of the standards contained in subsection (b)(7) and (b)(8), shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

(b) Ambient air quality standards are as follows:

(1) Sulfur oxides as sulfur dioxide (SO₂) requirements are as follows:

(A) For primary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Eighty (80) µg/m³ (three-hundredths (0.03) parts per million (ppm)) annual arithmetic mean **not to be exceeded in a calendar year.**

(ii) Three hundred sixty-five (365) µg/m³ (fourteen-hundredths (0.14) ppm) maximum twenty-four (24) hour average concentration not to be exceeded more than ~~one (1)~~ **day once per calendar year. The twenty-four (24) hour averages shall be determined from successive nonoverlapping three (3) hour blocks starting at midnight each calendar day.**

(B) For secondary standards, the following value shall represent the maximum permissible ambient air quality levels: one thousand three hundred (1,300) µg/m³ (five-tenths (0.5) ppm) maximum three (3) hour concentration not to be exceeded more than once per year. **The three (3) hour averages shall be determined from successive nonoverlapping three (3) hour blocks starting at midnight each calendar day.**

(C) SO₂ values may be converted to ppm using the conversion factor two thousand six hundred twenty (2,620) µg/m³ = one (1) ppm.

(2) Total suspended particulates (TSP) requirements are as follows:

(A) For primary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Seventy-five (75) µg/m³ annual geometric mean.

(ii) Two hundred sixty (260) µg/m³ maximum twenty-four (24) hour average concentration not to be exceeded more than one (1) day per year.

(B) For secondary standards, the following value shall represent maximum permissible ambient air quality levels: one hundred fifty (150) µg/m³ maximum twenty-four (24) hour average concentration not to be exceeded more than one (1) day per year.

(3) Carbon monoxide (CO) requirements are as follows:

(A) For primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Ten (10) milligrams per cubic meter (mg/m³) (ten thousand (10,000) µg/m³) (nine (9) ppm) maximum eight (8) hour average concentration not to be exceeded more than once per year.

(ii) Forty (40) mg/m³ (forty thousand (40,000) µg/m³) (thirty-five (35) ppm) maximum one (1) hour average concentration not to be exceeded more than once per year.

(B) CO values may be converted to ppm using the conversion factor one thousand one hundred forty-five (1,145) µg/m³ = one (1) ppm.

(4) Ozone (O₃) requirements ~~shall be~~ **are** as follows:

(A) For the one (1) hour ozone standards, the level of the one (1) hour primary and secondary ambient air quality standards for ozone measured by a reference method based on 40 CFR 50, Appendix D* and designated in accordance with 40 CFR 53* is twelve-hundredths (0.12) ppm (two hundred thirty-five (235) $\mu\text{g}/\text{m}^3$). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above twelve-hundredths (0.12) ppm (two hundred thirty-five (235) $\mu\text{g}/\text{m}^3$) is equal to or less than one (1) as determined by 40 CFR 50, Appendix H*.

(B) For the eight (8) hour ozone standards, the:

- (i) level of the eight (8) hour primary and secondary ambient air quality standards for ozone, measured by a reference method based on 40 CFR 50, Appendix D* and designated in accordance with 40 CFR 53*, is eight-hundredths (0.08) ppm, daily maximum eight (8) hour average; and
- (ii) eight (8) hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth highest daily maximum eight (8) hour average ozone concentration is less than or equal to eight-hundredths (0.08) ppm as determined in accordance with 40 CFR 50, Appendix I*.

(C) O_3 values may be converted to ppm using the conversion factor one thousand nine hundred sixty-five (1,965) $\mu\text{g}/\text{m}^3 = 1.0$ ppm.

(5) Nitrogen dioxide (NO_2) requirements ~~shall be~~ are as follows:

(A) For primary and secondary standards, the following value shall represent the maximum permissible ambient air quality level: one hundred (100) $\mu\text{g}/\text{m}^3$ (five-hundredths ~~(0.05)~~ **(0.053)** ppm) annual arithmetic mean **concentration in a calendar year**.

(B) NO_2 values may be converted to ppm using the conversion factor one thousand eight hundred eighty (1,880) $\mu\text{g}/\text{m}^3 = \text{one (1) ppm}$.

(6) Lead (Pb): For primary and secondary standards, the following value shall represent the maximum permissible ambient air quality level: one and five-tenths (1.5) micrograms lead per cubic meter of air (μg of Pb/m^3), averaged over a calendar quarter and measured as elemental lead.

(7) PM_{10} : For primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(A) Fifty (50) $\mu\text{g}/\text{m}^3$ annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix K*, is less than or equal to fifty (50) $\mu\text{g}/\text{m}^3$.

(B) One hundred fifty (150) $\mu\text{g}/\text{m}^3$ maximum twenty-four (24) hour average concentration. The standards are attained when the expected number of days per calendar year with a twenty-four (24) hour average concentration above one hundred fifty (150) $\mu\text{g}/\text{m}^3$, as determined in accordance

with 40 CFR 50, Appendix K*, is equal to or less than one (1).

(8) $\text{PM}_{2.5}$: For primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(A) Fifteen (15) micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual arithmetic mean concentration. The standards are attained when the annual arithmetic mean concentration is less than or equal to fifteen (15) $\mu\text{g}/\text{m}^3$, as determined in accordance with 40 CFR 50, Appendix N* and measured in the ambient air as $\text{PM}_{2.5}$ by either:

- (i) a reference method based on 40 CFR 50, Appendix L*, and designated in accordance with 40 CFR 53*; or**
- (ii) an equivalent method designated in accordance with 40 CFR 53*.**

(B) Sixty-five (65) $\mu\text{g}/\text{m}^3$ twenty-four (24) hour average concentration. The standards are attained when the ninety-eighth percentile twenty-four (24) hour concentration is less than or equal to sixty-five (65) micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), as determined in accordance with 40 CFR 50, Appendix N and measured in the ambient air as $\text{PM}_{2.5}$ by either:

- (i) a reference method based on 40 CFR 50, Appendix L*, and designated in accordance of 40 CFR 53*; or**
- (ii) an equivalent method designated in accordance with 40 CFR 53*.**

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 1-3-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2378; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3020; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3055; filed Mar 9, 2004, 3:45 p.m.: 27 IR 2224*)

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 September 1, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed 326 IAC 1-2-52.2, 326 IAC 1-2-52.4, and 326 IAC 1-2-82.5 and amendments to 326 IAC 1-2-52 and 326 IAC 1-3-4.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules and amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Gayl Killough, Rule Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855, (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule

LSA Document #03-264

DIGEST

Adds 326 IAC 20-56 to incorporate by reference the national emission standards for hazardous air pollutants from reinforced plastic composites production and amends 326 IAC 20-25, the state styrene rule, concerning emissions from reinforced plastic composites fabricating emission units to consolidate requirements applicable to reinforced plastic composites production in 326 IAC 20-56. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: October 1, 2003, Indiana Register (27 IR 292).

Second Notice of Comment Period and Notice of First Hearing: January 1, 2004, Indiana Register (27 IR 1304).

Change in Notice of First Hearing: March 1, 2004, Indiana Register (27 IR 1936).

Date of First Hearing: May 5, 2004.

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 draft rule published on January

1, 2004, at 27 IR 1304, 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, 2004, through February 2, 2004, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On May 5, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 20-25 and new rule 326 IAC 20-56. Comments were made by the following parties:

Monaco Coach (MC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: IDEM should not include the more stringent emission limit from 326 IAC 20-25 for open molding noncorrosion resistant or non-high strength operation type in 326 IAC 20-56 to ensure national consistency. USEPA did not use the descriptor "unfilled" because it is confusing and unenforceable. (MC)

Response: We will consider this comment and talk with affected parties.

Comment: If 326 IAC 20-56-2 remains in the rule the table should be amended to clarify that the category is non-corrosion resistant, or non-high strength, or both non-corrosion resistant and non-high strength. (MC)

Response: IDEM agrees and will amend the rule language.

Comment: The operator training requirement to train new hires should be extended from fifteen (15) days to thirty (30) days. Changing the rule to thirty (30) days would reduce confusion and make the rule language more consistent with permits and standard practices. (MC)

Response: We will consider this comment and talk with affected parties.

Comment: The record keeping requirements should be modified to be consistent with other rules and record retention practices. 326 IAC 20-25 and 326 IAC 20-56 both require records indicating all training dates for all current employees. Most record retention practices for environmental rules require records be available for five years with records on-site for three (3) years and the remaining two (2) years available upon request.

Response: We will consider this comment and talk with affected parties.

326 IAC 20-25-1

326 IAC 20-25-2

326 IAC 20-56

SECTION 1. 326 IAC 20-25-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-1 Applicability

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-17-3

Sec. 1. (a) This rule applies to owners or operators of sources that emit or have the potential to emit ten (10) tons per year of any hazardous air pollutant (HAP) or twenty-five (25) tons per

year of any combination of HAPs and that meet all of the following criteria:

- (1) Manufacture reinforced plastics composites parts, products, or watercraft.
- (2) Have an emission unit where resins and gel coats that contain styrene are applied and cured using the open molding process.
- (3) Have actual emissions of styrene equal to or greater than three (3) tons per year.

(b) Except as provided in section 3(d) of this rule, in the event there is a conflict between this rule and any existing federal or state statute or federal or state rule, the more stringent requirement shall apply.

(c) If A source **that** is subject to 326 IAC 20-48 concerning emission standards for hazardous air pollutants for boat manufacturing **the source** is exempt from this rule after the following compliance dates for 326 IAC 20-48:

- (1) August 23, 2004, for an existing source that is a major source on or before August 22, 2001.
- (2) One (1) year after becoming a major source for an existing or new nonmajor source.
- (3) Upon startup for a new major source.

(d) A source **that is subject to 326 IAC 20-56 concerning emission standards for hazardous air pollutants from reinforced plastic composites production is exempt from this rule after the following compliance dates for 326 IAC 20-56:**

- (1) **April 21, 2006, for a major source that existed on or before August 2, 2001.**
- (2) **Immediately upon becoming a major source for an area source or April 21, 2006, whichever is later.**
- (3) **Upon startup for a major source that commenced construction after August 2, 2001.**

(Air Pollution Control Board; 326 IAC 20-25-1; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2406; filed Mar 25, 2003, 8:10 a.m.: 26 IR 2607)

SECTION 2. 326 IAC 20-25-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-2 Definitions

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

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

- (1) "Air-assisted airless spray technology" means a coating application system in which:
 - (A) the coating fluid (including gel coat or resin) is supplied to the gun under fluid pressure; and
 - (B) air is combined at the spray cap of the gun.
- (2) "Airless spray technology" means a coating application system in which:
 - (A) the coating fluid (including gel coat or resin) is sup-

plied to the gun under fluid pressure; and

(B) air is not added to the gun.

(3) "Base coat gel coat" means an interior gel coat, used in boat building, to protect the laminate.

(4) "Class I flame and smoke products" means the following:

(A) For products meeting a building code, products that meet any one (1) of the following flame spread and smoke intensity numbers as tested by American Society for Testing and Materials (ASTM) E84-99**:

(i) Interior; flame spread less than twenty-five (25) and smoke intensity less than four hundred fifty (450).

(ii) Exterior; flame spread less than twenty-five (25).

(iii) Duct; flame spread less than twenty-five (25) and smoke intensity less than fifty (50).

(B) For products designed for mass transit application, products that meet all of the following:

(i) Flame spread measured by ASTM E162-98** less than thirty-five (35).

(ii) Smoke intensity by ASTM E662-97** less than one and five-tenths (1.5) at one and five-tenths (1.5) minutes and less than two hundred (200) at four (4) minutes.

(5) "Clear gel coat" means a gel coat that contains no pigments.

(6) "Compression molding" means the use of a prepared compound, such as sheet molding compound (SMC), composed of resin and fiberglass fibers and a large hydraulic press to produce fiber reinforced plastic parts.

(7) "Controlled spray" means a work practice standard that reduces emissions by increasing material transfer and reducing overspray. The following are elements of controlled spraying **which that** work together to reduce emissions:

(A) Operation of the spray gun at the lowest fluid tip pressure, which produces an acceptable spray pattern.

(B) Operator training that teaches proper spray gun handling techniques.

(C) The use of close containment mold flanges to minimize overspray off the mold.

(8) "Cured resin or gel coat" means resin or gel coat that has changed irreversibly from a liquid to a solid.

(9) "Delivered to the applicator" means a resin or gel coat actually applied to an open mold, excluding any inert filler, fiberglass mat, or fiberglass roving.

(10) "Existing sources" means sources or emission units for which the owner or operator has received all necessary construction or reconstruction permits prior to June 28, 1998, as set forth in 326 IAC 2-4.1-1.

(11) (10) "Filament ~~winding~~ **application**" means the application of resin to strands of glass using a resin bath or other applicator and then winding the wet glass onto the mold or part **an open molding process for fabricating composites in which reinforcements are fed through a resin bath and wound onto a rotating mandrel. The materials on the mandrel may be rolled out or worked by using nonmechanical tools prior to curing. Resin application to the reinforcement on the mandrel by means other than**

the resin bath, such as spray guns, pressure fed rollers, flow coat,ers, or brushes, is not considered filament application.

~~(12)~~ **(11)** "Filled resin" means a resin containing inert filler material equal to or greater than thirty-five percent (35%) by weight.

~~(13)~~ **(12)** "Gel coat" means a thermosetting resin, either pigmented or clear, that contains styrene (CAS No. 100-42-5) and provides a cosmetic enhancement or protects the underlying layers of a plastic composites material. Gel coat does not include thermoplastic material, such as polyethylene or thermosetting coatings, that do not contain styrene, such as epoxies.

~~(14)~~ **(13)** "HAP monomer content" means the percent, by weight, of monomer that has been classified as a hazardous air pollutant (HAP) contained in a resin or gel coat, as delivered to the applicator, and excluding any inert filler, fiberglass mat, or fiberglass roving.

~~(15)~~ **(14)** "High-volume, low-pressure air atomized spray technology" means a coating application system that is operated at an air pressure of less than ten (10) pounds per square inch gauge (psig) at the air cap of the spray gun.

~~(16)~~ **(15)** "Inert filler" means any non-HAP material, such as silica microspheres or microballoons, added to a resin or gel coat to alter density of the resin or gel coat or change other physical properties of the resin or gel coat. The term does not include pigments.

~~(17)~~ **(16)** "Manual application" means hand application using bucket and paint brush or **bucket and** paint roller. ~~or other hand held methods of application.~~

(17) "Mechanical application" means application of resins or gel coats using an applicator from which the material is sprayed from the applicator using:

- (A) air-atomization;**
- (B) air-assisted airless;**
- (C) airless;**
- (D) HVLP;**
- (E) LVLP; or**
- (F) nonatomized;**

applicators or is mechanically dispensed within or onto a paint roller applicator, such as pressure fed rollers.

(18) "Mold" means a hollow form or matrix for shaping a liquid or plastic substance.

(19) "New sources" means those sources or emission units that must comply with 326 IAC 2-4.1-1.

(20) "Nonatomized application equipment" means the devices where resin or gel coat material does any of the following:

- (A) Flows from the applicator, in a steady state in a observable coherent flow, without droplets, for a minimum distance of three (3) inches from the applicator orifices, such as flow coat,ers, flow choppers, and fluid impingement equipment.
- (B) Is mechanically dispensed within or on to a paint roller applicator, such as pressure fed rollers.
- (C) Is deposited on fiber reinforcement moving through a resin or gel coat bath, such as resin impregnators.

(21) "Noncorrosion resistant resin" means a resin that does

not meet the criteria of corrosion resistant resin in the specialty product resins definition.

~~(22)~~ "Open molding process" means the application of resin or gel coat to an open mold ~~by any method.~~ **using mechanical or manual application, but excluding polymer casting and filament application.**

(23) "Pigmented gel coat" means a gel coat that contains a coloring substance.

(24) "Polymer casting" means a process for fabricating composites in which composite materials are ejected from a casting machine or poured into an open, partially open, or closed mold and cured. After the composite materials are poured into the mold, they are not rolled out or worked while the mold is open. The composite materials may or may not include reinforcements. Products produced by the polymer casting process include cultured marble products and polymer concrete.

~~(24)~~ **(25)** "Pressure fed roller" means a fabric roller that is fed a continuous supply of catalyzed resin from a mechanical fluid pump.

~~(25)~~ **(26)** "Production gel coat" means a gel coat that is used to manufacture parts, products, or watercraft and does not include patch repair or touch-up activities.

~~(26)~~ **(27)** "Production resin" means any thermosetting resin that is used to manufacture parts, products, or watercraft and does not include patch repair or touch-up activities.

~~(27)~~ **(28)** "Resin" means any thermosetting resin that contains styrene (CAS No. 100-42-5) or methyl methacrylate (CAS No. 80-62-6), or both, and is used to manufacture parts, products, or watercraft. Resin does not include:

- (A)** gel coat;
- (B)** tooling gel coat;
- (C)** thermoplastic resin, for example, rotationally molded polyethylene; or
- (D)** thermosetting resin;

that does not contain styrene or methyl methacrylate, for example, epoxies.

(29) "Resin and gel coat mixing container" means a container that is used for mixing resin or gel coat and is not concurrently used to supply resin or gel coat to an applicator.

~~(28)~~ **(30)** "Shrinkage controlled resin" means resin that relies on a balance of solution thermodynamics that permits three (3) phases (thermosetting polymer, styreneated thermoplastic, and styrene monomer) and produces less than or equal to one and five-tenths percent (1.5%) linear shrinkage when tested in neat (unfilled, nonreinforced) form by ASTM D2566-86**.

~~(29)~~ **(31)** "Specialty product resins" includes the following resins:

- (A) Corrosion resistant resin is used to produce a product that meets any of the following criteria:
 - (i) Will be exposed to any of the following:
 - (AA) Materials with a pH equal to or greater than twelve (12.0) pH units or equal to or less than three

- (3.0) pH units.
- (BB) Oxidizing agents.
- (CC) Reducing agents.
- (DD) Organic solvents.
- (EE) Fuels or fuel additives as defined in 40 CFR 79.2*.

(ii) Complies with industry standards that require specific exposure testing for corrosive media.

(iii) Is manufactured to an accepted federal and industry standard for corrosion resistant, potable water contact or food contact applications.

(iv) Is manufactured specifically for an application that requires increased chemical inertness or resistance to chemical attack.

(B) High strength resin exhibiting a tensile strength of ten thousand (10,000) or more pounds per square inch when tested according to ASTM D638-98**.

(C) Resin used to meet military specifications.

(D) Skin coat resin, a thin protective layer of resin, used in watercraft production or other products, applied between the gel coat and laminate that provides corrosion resistance and prevents osmotic blistering.

~~(30)~~ (32) "Tooling gel coat" means the gel coat used in the construction of molds or prototypes (plugs).

~~(31)~~ (33) "Tooling resin" means the resin used in the construction of molds or prototypes (plugs).

~~(32)~~ (34) "Vacuum bagging" means a partially closed molding technology where, after resin has been applied, a flexible cover is placed over the wet surface, sealed, and a vacuum pump is used to draw the air out from under the cover and press the cover down onto the part.

~~(33)~~ (35) "Vapor suppressed resin" is a polyester resin material that contains additives to reduce volatile organic compound (VOC) evaporation loss to less than sixty (60) grams per square meter of surface area as determined and certified by resin manufacturers.

~~(34)~~ (36) "Watercraft" means any motorized or nonmotorized device in which or by means of which a person may be transported upon the water, excluding seaplanes.

***This document is incorporated by reference.** Copies of the Code of Federal Regulations referenced in this article may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20204 or are available for review and copying from at the Indiana Department of Environmental Management, Office of Air Management, Department of Environmental Management, Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana or may be obtained from the Government Printing Office, Washington, D. C. 20204. 46204.

****This document is incorporated by reference.** Copies of American Society for Testing Materials methods are available for review and copying from at the Indiana Department of

Environmental Management, Office of Air Management, Department of Environmental Management, Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana ASTM; 1916 Race Street, Philadelphia, PA 19103-1187; or the public library: 46204. (Air Pollution Control Board; 326 IAC 20-25-2; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2407)

SECTION 3. 326 IAC 20-56 IS ADDED TO READ AS FOLLOWS:

Rule 56. Reinforced Plastic Composites Production

326 IAC 20-56-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-12-3-1; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.5785 (68 FR 19402, April 21, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart WWWW (68 FR 19402, April 21, 2003)*, National Emission Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

***This document is incorporated by reference.** Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 20-56-1)

326 IAC 20-56-2 Additional organic hazardous air pollutant emissions limits for open molding sources

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-12-3-1; IC 13-17

Sec. 2. In addition to the organic hazardous air pollutant (HAP) emissions limits for existing open molding sources and new open molding sources emitting less than one hundred (100) tons per year of HAP contained in Table 3 to 40 CFR 63, Subpart WWWW (68 FR 19402, April 21, 2003)*, the following emission limit applies:

Operation type	And this application method	Organic HAP emissions limit ¹	Highest organic HAP content for a compliant resin ²
Open molding - noncorrosion-resistant or high strength, or both (CR/HS) and unfilled ³	Mechanical Resin Application	77 lb/ton	35 percent with nonatomized application

¹Organic HAP emissions limits for open molding are expressed as lb/ton. The source must be at or below these values based on a 12-month rolling average.

²A compliant resin means that, if its organic HAP content is used to calculate an organic HAP emissions factor, the factor calculated does not exceed the appropriate organic HAP emissions limit shown in the table.

³See the definition of unfilled resin at 40 CFR 63.5935 (68 FR 19402, April 21, 2003)*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-56-2*)

326 IAC 20-56-3 Operator training

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-12-3-1; IC 13-17

Sec. 3. (a) Each owner or operator shall train all new and existing personnel, including contract personnel, who are involved in resin and gel coat spraying and applications that could result in excess emissions if performed improperly according to the following schedule:

- (1) All personnel hired shall be trained within fifteen (15) days of hiring.**
- (2) To ensure training goals listed in subsection (b) are maintained, all personnel shall be given refresher training annually.**
- (3) Personnel who have been trained by another owner or operator subject to this rule are exempt from subdivision (1) if written documentation that the employee's training is current is provided to the new employer.**

(b) The lesson plans shall cover, for the initial and refresher training, at a minimum, all of the following topics:

- (1) Appropriate application techniques.**
- (2) Appropriate equipment cleaning procedures.**
- (3) Appropriate equipment setup and adjustment to minimize material usage and overspray.**

(c) The owner or operator shall maintain the following training records on site and make them available for inspection and review:

- (1) A copy of the current training program.**
- (2) A list of the following:**
 - (A) All current personnel, by name, that are required to be trained.**
 - (B) The dates they were trained.**
 - (C) The date of the most recent refresher training.**

(d) Records of prior training programs and former personnel are not required to be maintained. (*Air Pollution Control Board; 326 IAC 20-56-3*)

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 September 1, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 20-25 and new rule 326 IAC 20-56.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules/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 Susan Bem, Rules Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015*

or call (317) 233-0855, (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #03-283

DIGEST

Amends 326 IAC 18-1-1, 326 IAC 18-1-2, 326 IAC 18-1-3, 326 IAC 18-1-4, 326 IAC 18-1-5, 326 IAC 18-1-6, 326 IAC 18-1-9, and 326 IAC 18-2-2 to delete requirements for waste disposal managers to be licenced to handle asbestos waste. Amends 326 IAC 18-2-3 to correct typographical errors and

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formatting. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 2003, Indiana Register (27 IR 574).

Second Notice of Comment Period and Notice of First Public Hearing: April 1, 2004, Indiana Register (27 IR 2343).

Date of First Hearing: June 2, 2004.

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 draft rule published on April 1, 2004 at (27 IR 2343), 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 April 1, 2004, through May 1, 2004, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 2, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 18-1 and 326 IAC 18-2. No comments were made at the first hearing.

326 IAC 18-1-1	326 IAC 18-1-6
326 IAC 18-1-2	326 IAC 18-1-9
326 IAC 18-1-3	326 IAC 18-2-2
326 IAC 18-1-4	326 IAC 18-2-3
326 IAC 18-1-5	

SECTION 1. 326 IAC 18-1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6

Affected: IC 13-11-2-158; IC 13-17

Sec. 1. (a) This rule shall apply to persons who do any of the following:

- (1) Inspect for asbestos-containing materials at a facility.
- (2) Develop asbestos management plans for school buildings.
- (3) Design asbestos projects for implementation at a facility.
- (4) Supervise the implementation of asbestos projects at a facility.
- (5) Implement asbestos projects at a facility.
- ~~(6) Manage disposal, at a waste disposal facility, of ACM removed from a facility as specified at 329 IAC 10-8-4.~~

(b) A person may apply to the department for a license to perform activities under any of the following disciplines:

- (1) Inspector.

- (2) Management planner.
- (3) Project designer.
- (4) Asbestos project supervisor.
- (5) Asbestos worker.
- (6) Asbestos contractor.
- ~~(7) Waste disposal manager.~~

(Air Pollution Control Board; 326 IAC 18-1-1; filed Sep 23, 1988, 1:45 a.m.; 12 IR 269; filed May 12, 1998, 9:15 a.m.; 21 IR 3747; readopted filed Jan 10, 2001, 3:20 p.m.; 24 IR 1477)

SECTION 2. 326 IAC 18-1-2, PROPOSED TO BE AMENDED AT 26 IR 2084, SECTION 84, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6

Affected: IC 13-11-2-158; IC 13-17

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

- (1) "Approved initial training course" means a course approved by the department under 326 IAC 18-2 for purposes of providing initial training to persons to become licensed.
- (2) "Approved refresher training course" means a course approved by the department under 326 IAC 18-2 for purposes of providing refresher training to licensed persons.
- (3) "Asbestos" means the asbestiform varieties of the following:
 - (A) Chrysotile (serpentine).
 - (B) Crocidolite (riebeckite).
 - (C) Amosite (cummingtonite-grunerite).
 - (D) Anthophyllite.
 - (E) Tremolite.
 - (F) Actinolite.
- (4) "Asbestos-containing building material" or "ACBM" means any ACM that is in or on structural members or other parts of a school.
- (5) "Asbestos-containing material" or "ACM" means asbestos or any material containing more than one percent (1%) asbestos as determined by methods specified in 40 CFR 763, Appendix E, Subpart E, Section 1, Polarized Light Microscopy* including Category I and Category II asbestos-containing material and all friable material.
- (6) "Asbestos-Containing Materials in Schools Rule" means the Asbestos-Containing Materials in Schools Rule under 40 CFR 763, Subpart E*.
- ~~(7) "Asbestos waste disposal manager" means a person who is present on-site during all ACM handling and disposal activities under 329 IAC 10-8-4.~~
- ~~(8) (7) "Asbestos license" means a document issued by the department to a person meeting the licensing requirements of this rule.~~
- ~~(9) (8) "Asbestos Model Accreditation Plan Rule" means the Asbestos Model Accreditation Plan Rule under 40 CFR 763, Subpart E, Appendix C*.~~
- ~~(10) (9) "Asbestos removal contractor" means a person who~~

enters into one (1) or more contracts to implement an asbestos removal project at a facility.

~~(11)~~ **(10)** "Asbestos removal project" means any and all activities at a facility involving the removal, encapsulation, enclosure, abatement, renovation, repair, removal, storage, stripping, dislodging, cutting, or drilling that result in the disturbance or repair of any one (1) of the following:

- (A) At least three (3) linear feet of RACM on or off pipes.
- (B) At least three (3) square feet of RACM on or off other facility components.
- (C) A total of at least seventy-five hundredths (0.75) cubic foot of RACM on or off all facility components.

These activities include, but are not limited to, work area preparation, implementation of engineering controls and work practices, and work area decontamination activities required by 326 IAC 14-10-4 or 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).

~~(12)~~ **(11)** "Certificate of accreditation" means a document issued by the department to a person who met the accreditation requirements of this rule prior to the rule being amended to change the term from accreditation to asbestos license.

~~(13)~~ **(12)** "Certificate of training" means a document issued by an approved initial or refresher training course provider to a person indicating that the person attended an approved initial or refresher training course and received a passing score on the written examination for such course. A certificate of training issued to a person seeking licensing by the department shall not be valid for purposes of this subdivision if such certificate of training is issued by a training course provider who is such person's partner or employer or a subsidiary entity of such person's employer.

~~(14)~~ **(13)** "Facility" means any:

- (A) school building;
- (B) institutional, commercial, public, or industrial building, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four (4) or fewer dwelling units);
- (C) ship; and
- (D) active or inactive waste disposal site.

For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. The term includes any structure, installation, or building that was previously subject to 326 IAC 14, regardless of its current use or function.

~~(15)~~ **(14)** "Facility component" means any part of a facility, including equipment.

~~(16)~~ **(15)** "Friable" means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material and includes previously nonfriable material after such nonfriable material becomes damaged to the extent that

when dry it may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material.

~~(17)~~ **(16)** "Inspection" means those activities undertaken to specifically determine the presence or location, or to assess the condition, of friable or nonfriable ACM, or suspected ACM, whether by visual or physical examination, or by collecting samples of such material. In addition, the term includes all reinspections of friable and nonfriable known or assumed ACM ~~which~~ **that** has been previously identified. The term excludes the activities of periodic surveillance, compliance inspections, and visual inspections as referenced in 40 CFR 763.90(i)*.

~~(18)~~ **(17)** "Inspector" means any person who conducts an inspection for ACM in a facility.

~~(19)~~ **(18)** "Interim accreditation", when referring to a training course, means that the U.S. EPA has determined that the training course meets the requirements of Section 206(c)(2) of the Toxic Substances Control Act (TSCA) Title II*.

~~(20)~~ **(19)** "Licensed", when referring to a person, means a person holding a current asbestos license issued by the department under this rule.

~~(21)~~ **(20)** "Major fiber release episode" means any disturbance of ACM, resulting in a visible emission, ~~which~~ **that** involves the falling or dislodging of more than three (3) square feet, three (3) linear feet, or seventy-five hundredths (0.75) cubic foot of friable ACM.

~~(22)~~ **(21)** "Management plan" means a document prepared under the Asbestos-Containing Materials in Schools Rule under 40 CFR 763, Subpart E* that addresses the manner in which ACM will be handled in a school building.

~~(23)~~ **(22)** "Management planner" means any person who prepares management plans for schools.

~~(24)~~ **(23)** "Nonfriable", when referring to material at a facility, means material ~~which~~ **that**, when dry, may not be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material.

~~(25)~~ **(24)** "Person" has the meaning as set forth in IC 13-11-2-158(a).

~~(26)~~ **(25)** "Photographic identification card" means any of the following:

- (A) A valid driver's license or identification (ID) card issued by any state that displays the individual's photograph.
- (B) A valid work visa issued by the United States Department of Justice.
- (C) A valid United States passport.

~~(27)~~ **(26)** "Project designer" means a person who designs any of the following activities with respect to RACM in a facility:

- (A) An asbestos project other than a small scale short duration (SSSD) maintenance activity.
- (B) A maintenance activity that disturbs RACM other than an SSSD maintenance activity.

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(C) An asbestos project for a major fiber release episode.
~~(28)~~ **(27)** “Project supervisor” means a person who supervises or performs any of the following activities with respect to RACM in a facility:

- (A) An asbestos project other than an SSSD activity.
- (B) A maintenance activity that disturbs RACM other than an SSSD activity.
- (C) An asbestos project for a major fiber release episode.

~~(29)~~ **(28)** “Regulated asbestos-containing material” or “RACM” means the following:

- (A) Friable asbestos material.
- (B) Category I nonfriable ACM that has become friable.
- (C) Category I nonfriable ACM that will be or has been subjected to:
 - (i) sanding;
 - (ii) grinding;
 - (iii) cutting;
 - (iv) abrading; or
 - (v) burning.
- (D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this article.

The term does not include nonfriable asbestos-containing resilient floor covering materials unless the materials are sanded, beadblasted, or mechanically pulverized so that visible asbestos emissions are discharged or the materials are burned. Resilient floor covering materials include sheet vinyl flooring, resilient tile, or associated adhesives.

~~(30)~~ **(29)** “Response action” means a method, including:

- (A) removal;
- (B) encapsulation;
- (C) enclosure;
- (D) repair; and
- (E) operation and maintenance;

that protects human health and the environment from RACM.

~~(31)~~ **(30)** “School” means any combination of grades kindergarten, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

~~(32)~~ **(31)** “School building” means the following:

- (A) Any structure at a school suitable for use as a:
 - (i) classroom;
 - (ii) laboratory;
 - (iii) library;
 - (iv) school eating facility; or
 - (v) facility used for the preparation of food.
- (B) Any gymnasium or other facility at a school ~~which that~~ is specially designed for athletic or recreational activities for an academic course in physical education.
- (C) Any other facility used by a school for the instruction or housing of students or for the administration of educational or research programs.
- (D) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility

described in clauses (A) through (C).

(E) Any portico or covered exterior hallway or walkway ~~which that~~ is part of a school.

(F) Any exterior portion of a mechanical system used to heat, ventilate, or air condition (HVAC) interior space of a school.

~~(33)~~ **(32)** “Small-scale, short duration” or “SSSD” means any activity in which the amount of RACM being disturbed is less than three (3) linear feet on or off pipes or three (3) square feet on or off other facility components, or a total of less than seventy-five hundredths (0.75) cubic foot on or off all facility components.

~~(34)~~ **(33)** “Structural member” means any load-supporting member of a facility, such as beams and load-supporting walls, or any nonload-supporting member, such as ceilings and nonload-supporting walls.

~~(35)~~ **(34)** “Worker” means a person who performs any of the following activities with respect to RACM in a facility:

- (A) An asbestos project other than an SSSD activity.
- (B) A maintenance activity that disturbs RACM other than an SSSD activity.
- (C) An asbestos project for a major fiber release episode.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board*; 326 IAC 18-1-2; filed Sep 23, 1988, 1:45 p.m.: 12 IR 269; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2110; filed Dec 5, 1990, 3:40 p.m.: 14 IR 612; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2740; errata filed Jul 5, 1995, 10:00 a.m.: 18 IR 2795; filed May 12, 1998, 9:15 a.m.: 21 IR 3748; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1572)

SECTION 3. 326 IAC 18-1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-3 General provisions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 3. (a) No person shall conduct the following activities without licensing by the department:

- (1) Inspect for ACM at a facility.
- (2) Develop an asbestos management plan for a school building.
- (3) Design an asbestos project to be implemented at a facility.
- (4) Supervise the implementation of an asbestos project at a facility.
- (5) Implement an asbestos project at a facility.
- ~~(6) Manage disposal at a waste disposal facility, of ACM, as specified at 329 IAC 10-8-4.~~

(b) Those persons holding a valid Indiana certificate of accreditation on the effective date of this rule shall be considered licensed under this rule until the expiration date of their certificate of accreditation.

(c) A licensed person shall carry: ~~either of the following:~~

- (1) a certificate of accreditation and a photographic identification card; **or**
- (2) an asbestos license;

at all times while performing activities specified in subsection (a)(1) through ~~(a)(6)~~ **(a)(5)** unless otherwise specified in section ~~8(a)(2)~~ **8(2)** of this rule.

(d) An asbestos contractor shall implement asbestos projects by employing a licensed:

- (1)** asbestos worker; ~~an~~
- (2)** inspector; ~~a~~
- (3)** project supervisor; ~~a~~
- (4)** project designer; ~~or a~~
- (5)** management planner;

who fulfills the requirements of section 4(d) or 6(a) of this rule by successfully completing an approved training course provided by another Indiana approved training provider. (*Air Pollution Control Board; 326 IAC 18-1-3; filed Sep 23, 1988, 1:45 p.m.: 12 IR 270; filed Dec 5, 1990, 3:40 p.m.: 14 IR 614; filed May 12, 1998, 9:15 a.m.: 21 IR 3751; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477*)

SECTION 4. 326 IAC 18-1-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-4 Asbestos license; qualifications

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 4. (a) In order to qualify for an initial asbestos license as an asbestos inspector, a person shall meet the following:

- (1) Possess a high school degree or equivalent. Two (2) years of experience in one (1) or a combination of the following fields is equivalent to a high school degree:
 - (A) Asbestos inspection.
 - (B) Building construction.
 - (C) Building maintenance.
 - (D) General building inspection.
- (2) Have attended an approved initial training course for asbestos inspection and received a passing score on the written examination for such course.

(b) In order to qualify for an initial asbestos license as an asbestos management planner, a person shall meet the following:

- (1) Possess an associate's, bachelor's, or graduate degree in architecture, industrial hygiene, engineering, building system design, or a related field of study. One (1) year of experience in one (1) or more of the following fields and possession of a high school degree or equivalent, as provided in subsection

(a)(1), may substitute for the required associate's, bachelor's, or graduate degree:

- (A) Planning, supervision, or cost estimation of building construction.
- (B) Planning, supervision, or cost estimation of asbestos projects.
- (C) Asbestos inspection.
- (D) General building inspection.

(2) Have attended an approved initial training course for asbestos inspection and an approved training course for asbestos management planning and received passing scores on the written examinations for such courses.

(c) In order to qualify for an initial asbestos license as an asbestos project designer, a person shall meet the following:

- (1) Possess an associate's, bachelor's, or graduate degree in architecture, industrial hygiene, engineering, building system design, or a related field of study. One (1) year of experience in one (1) or more of the following fields and possession of a high school degree or equivalent, as provided in subsection (a)(1), may substitute for the required associate's, bachelor's, or graduate degree:
 - (A) Planning, supervision, or cost estimation of building construction.
 - (B) Planning, supervision, or cost estimation of asbestos projects.
 - (C) Asbestos inspection.
 - (D) General building inspection.
- (2) Have attended an approved initial training course for asbestos project design and received a passing score on the written examination for such course.

(d) In order to qualify for an initial asbestos license as an asbestos project supervisor, a person shall meet the following:

- (1) Have a minimum of six (6) months of experience as an asbestos project supervisor or as an asbestos worker.
- (2) Have attended an approved initial training course for asbestos project supervision and received a passing score on the written examination for such course.

(e) In order to qualify for an initial asbestos license as an asbestos worker, a person shall have attended an approved initial training course for asbestos workers or an approved initial training course for asbestos project supervisors and received a passing score on the written examination for such course.

~~(f) In order to qualify for an initial asbestos license as an asbestos waste disposal manager, a person shall have attended an approved initial training course for asbestos workers or an approved initial training course for asbestos project supervisors and received a passing score on the written examination for such course:~~

~~(g)~~ **(f)** In order to qualify for an initial asbestos license as an

asbestos contractor, a person shall meet the following:

- (1) Possess proof of financial responsibility with a current certificate of insurance documenting that the contractor carries asbestos liability insurance in the amount of at least five hundred thousand dollars (\$500,000) for the implementation of asbestos projects. The company offering insurance coverage must be recognized or licensed by the Indiana department of insurance to provide asbestos coverage. The contractor shall notify the department in writing within five (5) working days of any change in the status of the contractor's financial responsibility.
- (2) Have attended an approved initial training course for an asbestos project supervisor or an asbestos removal contractor and received a passing score on the written examination for such course. A contractor may designate an employee to fulfill the training requirements in this subdivision and in section 6(a)(2) of this rule. The contractor shall notify the department in writing if the contractor transfers the designated status to another employee within five (5) working days of the transfer. Such written notification shall include the name of the newly designated employee and evidence of that person's successful completion of training requirements in this subdivision and in section 6(a)(2) of this rule.
- (3) Demonstrate that the contractor is competent in the field of asbestos project implementation.
- (4) The department shall be listed as a certificate holder on the insurance certificate.

(h) (g) Any individual who has had an eighteen (18) month time lapse between any two (2) training courses of the same discipline shall be required to attend an initial training course for the discipline in which he or she is seeking licensing. (*Air Pollution Control Board; 326 IAC 18-1-4; filed Sep 23, 1988, 1:45 p.m.: 12 IR 270; filed Jul 6, 1989, 1:15 p.m.: 12 IR 2026; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2112; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2743; filed May 12, 1998, 9:15 a.m.: 21 IR 3751; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477*)

SECTION 5. 326 IAC 18-1-5, PROPOSED TO BE AMENDED AT 26 IR 2086, SECTION 85, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-5 Asbestos license; application

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 5. (a) Any person seeking an initial asbestos license from the department as an asbestos inspector, a management planner, a project designer, a supervisor, **or** a worker **or an asbestos waste disposal manager**; shall complete the following:

- (1) Submit a completed application on forms provided by the department.
- (2) Provide a copy of all required certificates of training indicating that the person successfully completed the approved initial and any requisite refresher training courses as defined in section ~~2(2)~~ **2(1)** and ~~2(3)~~ **2(2)** of this rule and

received passing scores on all written examinations for such courses.

(3) Pay the license application fee specified in section 9 of this rule.

(b) Any person seeking an initial asbestos license from the department as an asbestos contractor shall complete the following:

- (1) Submit a completed written application on forms provided by the department.
- (2) Provide a statement that the person has read and understands this rule, the Asbestos-Containing Materials in Schools Rule, and 326 IAC 14-10.
- (3) Provide a copy of all required certificates of training indicating that the person, or the contractor's designated representative, successfully completed the approved initial and any requisite refresher training courses for asbestos project supervisor or asbestos contractor and received passing scores on all written examinations for such courses.
- (4) Provide a complete list of prior contracts for the previous twelve (12) months for asbestos projects, including names, addresses, and telephone numbers of persons for whom projects were performed.
- (5) Provide an up-to-date copy of the contractor's written standard operating procedures, which include current compliance procedures, for the following regulatory programs:
 - (A) 326 IAC 14-2 (Emission Standards for Sources of Asbestos).
 - (B) 326 IAC 14-10 (Asbestos Demolition and Renovation Operations).
 - (C) ~~326 IAC 18-1~~ **This rule** (Asbestos Management Personnel; Licensing).
 - (D) ~~329 IAC 10-8~~ **329 IAC 10-8.1** (Special Waste Management and Disposal at Municipal Solid Waste Landfill, Nonmunicipal Solid Waste Landfills, and Restricted Waste Landfills).
 - (E) 29 CFR 1926.1101* (Occupational Exposure to Asbestos, Final Rule).
 - (F) 29 CFR 1910.134* (Occupational Safety and Health Standards, Subpart I, Personal Protective Equipment).
- (6) Provide a description of any asbestos projects that the contractor conducted that were prematurely terminated or not completed, including the circumstances surrounding termination.
- (7) Provide a list of any contractual penalties that the contractor has paid for noncompliance with contract specifications.
- (8) Provide copies of any and all:
 - (A) warning letters;
 - (B) notice and order of the commissioner;
 - (C) agreed orders;
 - (D) citations;
 - (E) notices of violation; or
 - (F) findings of violation;levied against the contractor by any federal, state, or local governmental agency for violations of regulations or other

laws pertaining to asbestos activities, including names and locations of the projects, the dates, and a description of how the allegations were resolved.

(9) Provide a description detailing all:

- (A) legal proceedings;
- (B) lawsuits;
- (C) warning letters to supervisors from the commissioner; or
- (D) claims;

~~which that~~ have been filed or levied against the contractor or any of his past or present employees, while employed by said contractor, for asbestos-related activities.

(10) Provide documentation of the contractor's financial responsibility with a current certificate of insurance with at least five hundred thousand dollars (\$500,000) of asbestos liability insurance. The company offering insurance coverage must be recognized or licensed by the Indiana department of insurance.

(11) Pay the license application fee as specified in section 9 of this rule.

(c) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable.

(d) In addition to the requirements of subsections (a)(2) and (b)(3), the department may require an applicant or a designated representative of a contractor, in the case of subsection (b)(3), to take an examination administered by the department. The examination shall cover only the discipline for which the applicant is seeking a license. The department shall deny the application if the applicant does not receive a passing score of seventy percent (70%). If the department denies the application, the certificate of training is invalid and the applicant must retake and pass the initial training course for the discipline for which the applicant is seeking a license.

(e) The applicant shall provide two (2) copies of a clear and recent one and one-half (1½) inch by one and one-half (1½) inch identifying color photograph at the time of application to be attached to the face of the asbestos license by the department prior to issuance of the license by the department.

(f) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue an asbestos license to any person who fulfills the requirements established by this rule. The department may deny an application for an asbestos license based on any of the criteria listed in section 7 of this rule, as applicable, or for failure to comply with any other provision of this rule.

(g) Applications must be completed in writing and submitted

for processing. The department shall not process applications on a walk-in basis or process applications over the telephone. If the application is approved, the license will be sent to the applicant via the ~~U.S.~~ **United States** Postal Service to the address as listed on the application.

(h) An asbestos license shall be valid for one (1) year from the date of issuance.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 18-1-5; filed Sep 23, 1988, 1:45 p.m.: 12 IR 271; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2113; filed May 12, 1998, 9:15 a.m.: 21 IR 3752; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1572*)

SECTION 6. 326 IAC 18-1-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-6 Renewal of asbestos license

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6

Affected: IC 13-11-2-158; IC 13-17

Sec. 6. (a) Any person seeking to renew an asbestos license as an asbestos inspector, management planner, project designer, project supervisor, worker, ~~or contractor or asbestos waste disposal manager~~ shall meet the following requirements:

- (1) Have possessed a valid asbestos license within the previous six (6) months.
- (2) Have attended, within the previous twelve (12) months, an approved refresher training course for disciplines under which the person was previously accredited. In the case of a person seeking to renew an asbestos license as a management planner, the person will be required to have attended both the inspector refresher and the management planner refresher training courses.
- (3) Submit a completed application on forms provided by the department and include a copy of the certificates of training indicating that the person successfully completed the refresher training course and written examination.
- (4) Pay the license application fee as specified in section 9 of this rule.

(b) Any person seeking to renew an asbestos license as an asbestos removal contractor by the department shall include in the application updated information as required in section 5(b)(5) through 5(b)(10) of this rule if any information has changed during the previous twelve (12) months. The contractor shall routinely examine and update his standard operating procedures manual to reflect the compliance assurance methodologies that meet current federal, state, and local regulations or

other laws pertaining to asbestos.

(c) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable.

(d) The applicant shall provide two (2) copies of a clear and recent one and one-half (1½) inch by one and one-half (1½) inch identifying color photograph at the time of application to be attached by the department to the face of the asbestos license prior to issuance of the license by the department.

(e) In addition to the requirements in subsection (a)(2) through (a)(3), the department may require an applicant or a designated representative of a contractor to take an examination administered by the department. The examination shall cover only the discipline for which the applicant is seeking the renewal license. The department shall deny the application if the applicant does not receive a passing score of seventy percent (70%). If the department denies the application, the certificate of training is invalid and the applicant must retake and pass the refresher training course for the discipline for which the applicant is seeking a license renewal.

(f) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue an asbestos license to any person who fulfills the requirements established by this rule. However, the department may deny an application for renewal of an asbestos license based on any of the criteria listed in section 7 of this rule, as applicable, or for failure to comply with any other provision of this rule.

(g) Applications must be completed in writing and submitted for processing. The department shall not process applications on a walk-in basis or process applications over the telephone. If the application is approved, the license will be sent to the applicant via the United States Postal Service to the address as listed on the application.

(h) Any individual who has had an eighteen (18) month time lapse between any two (2) training courses of the same discipline shall be required to attend an initial training course for the discipline in which they are seeking to be licensed. (*Air Pollution Control Board; 326 IAC 18-1-6; filed Sep 23, 1988, 1:45 p.m.: 12 IR 272; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2744; filed May 12, 1998, 9:15 a.m.: 21 IR 3754; filed May 26, 2000, 8:47 a.m.: 23 IR 2425; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477*)

SECTION 7. 326 IAC 18-1-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-9 License fee; application fee

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6

Affected: IC 13-11-2-158; IC 13-17

Sec. 9. (a) Upon application for accreditation, an asbestos license, a person shall pay a fee as follows:

- (1) Asbestos inspector: one hundred dollars (\$100).
- (2) Asbestos management planner: one hundred dollars (\$100).
- (3) Asbestos project designer: one hundred dollars (\$100).
- (4) Asbestos contractor: one hundred fifty dollars (\$150).
- (5) Asbestos project supervisor: one hundred dollars (\$100).
- (6) Asbestos worker: fifty dollars (\$50).
- (7) ~~Asbestos waste disposal manager: fifty dollars (\$50);~~

(b) Fees paid by mail shall be paid by check or money order and shall be made payable to the Asbestos Trust Fund.

(c) The application fee is not:

- (1) transferable from one (1) type of asbestos license to another;
- (2) transferable from one (1) person to another;
- (3) transferable to any other type of license issued by the department; or
- (4) refundable;

unless requested by the applicant and approved by the department within three (3) days of submittal to the department or prior to processing by the department, whichever is earlier.

(d) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable or refundable. (*Air Pollution Control Board; 326 IAC 18-1-9; filed Sep 23, 1988, 1:45 a.m.: 12 IR 273; filed May 12, 1998, 9:15 a.m.: 21 IR 3755; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477*)

SECTION 8. 326 IAC 18-2-2, PROPOSED TO BE AMENDED AT 26 IR 2088, SECTION 88, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-2-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6

Affected: IC 13-11-2-158; IC 13-17

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

- (1) "Approved initial training course" means a course approved by the department under this rule for purposes of providing initial training to persons to become licensed.
- (2) "Approved refresher training course" means a course approved by the department under this rule for purposes of providing refresher training to licensed persons.
- (3) "Asbestos" means the asbestiform varieties of the following:

(A) Chrysotile (serpentine).

- (B) Crocidolite (riebeckite).
- (C) Amosite (cummingtonite-grunerite).
- (D) Anthophyllite.
- (E) Tremolite.
- (F) Actinolite.

(4) "Asbestos-containing material" or "ACM" means asbestos or any material containing more than one percent (1%) asbestos as determined using methods specified in 40 CFR 763, Subpart E, Appendix E, Section I, Polarized Light Microscopy* including Category I and Category II ACM and all friable material.

(5) "Asbestos removal project" means any and all activities at a facility involving the removal, encapsulation, enclosure, abatement, renovation, repair, removal, storage, stripping, dislodging, cutting, or drilling that results in the disturbance or repair of the following:

- (A) At least three (3) linear feet of RACM on or off pipes.
- (B) At least three (3) square feet of RACM on or off other facility components.
- (C) A total of at least seventy-five hundredths (0.75) cubic foot of RACM on or off all facility components.

These activities include, but are not limited to, work area preparation, implementation of engineering controls and work practices, and work area decontamination activities required by 326 IAC 14-10-4 or 29 CFR 1926.1101* (Occupational Safety and Health Administration Occupational Exposure to Asbestos).

(6) "Day", for purposes of determining duration of approved training courses, means eight (8) hours including breaks and lunch.

(7) "Facility" means any:

- (A) school building;
- (B) institutional, commercial, public, or industrial, building, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four (4) or fewer dwelling units);
- (C) ship; and
- (D) active or inactive waste disposal site.

For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to 326 IAC 14 is included, regardless of its current use or function.

(8) "Facility component" means any part of a facility, including equipment.

(9) "Friable", when referring to material at a facility, means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material and includes previously nonfriable material after such nonfriable material becomes damaged to the extent that, when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure

or mechanical forces reasonably expected to act on the material.

(10) "Hands-on training", when referring to a topic covered by a training course, means training ~~which that~~ gives students actual experience performing tasks associated with the accredited discipline as follows:

(A) For asbestos contractors, supervisors, ~~and workers, and disposal managers~~, the inclusion of the following:

- (i) Working with asbestos-substitute material.
- (ii) Fitting and using respirators.
- (iii) Use of glove bags.
- (iv) Donning protective clothing.
- (v) Constructing a decontamination unit.
- (vi) Other related abatement work activities.

(B) For asbestos inspectors, the inclusion of the following:

- (i) Simulated building walk-through inspection.
- (ii) Respirator fit testing.

(11) "Licensed", when referring to a person, means a person holding a current asbestos license issued by the department under 326 IAC 18-1 in the following disciplines:

- (A) Inspector.
- (B) Management planner.
- (C) Project designer.
- (D) Asbestos supervisor.
- (E) Asbestos worker.
- (F) Asbestos contractor.
- ~~(G) Waste disposal manager.~~

(12) "Management plan" means a document prepared under the Asbestos-Containing Materials in Schools Rule that addresses the manner in which ACM will be handled in a school building.

(13) "Nonfriable", when referring to material at a facility, means material ~~which, that~~, when dry, may not be crumbled, pulverized, or reduced to powder by either hand pressure or mechanical forces reasonably expected to act on the material.

(14) "Person" has the meaning set forth in IC 13-11-2-158(a).

(15) "Regulated asbestos-containing material" or "RACM" means the following:

- (A) Friable asbestos material.
- (B) Category I nonfriable ACM that has become friable.
- (C) Category I nonfriable ACM that will be or has been subjected to:
 - (i) sanding;
 - (ii) grinding;
 - (iii) cutting;
 - (iv) abrading; or
 - (v) burning.

(D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this article.

The term does not include nonfriable asbestos-containing resilient floor covering materials unless the materials are sanded, beadblasted, or mechanically pulverized so that

visible asbestos emissions are discharged or the materials are burned. Resilient floor covering materials include sheet vinyl flooring, resilient tile, or associated adhesives.

(16) "School" means any combination of grades kindergarten, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

(17) "School building" means any of the following:

(A) A structure at a school suitable for use as a:

- (i) classroom;
- (ii) laboratory;
- (iii) library;
- (iv) school eating facility; or
- (v) facility used for the preparation of food.

(B) A gymnasium or other facility at a school that is specially designed for athletic or recreational activities for an academic course in physical education.

(C) Another facility used by a school for the instruction or housing of students or for the administration of educational or research programs.

(D) A maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in clauses (A) through (C).

(E) A portico or covered exterior hallway or walkway that is part of a school.

(F) An exterior portion of a mechanical system used to heat, ventilate, or air condition (HVAC) the interior space of a school.

(18) "Training course provider" means a person who provides an approved initial training course or an approved refresher training course for the purpose of licensing persons under 326 IAC 18-1.

(19) "TSCA Title II" refers to 15 U.S.C. 2641 et seq. of the federal Toxic Substances Control Act as amended on October 22, 1986*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 18-2-2; filed Sep 23, 1988, 1:45 a.m.: 12 IR 273; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2114; filed May 12, 1998, 9:15 a.m.: 21 IR 3756; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1572*)

SECTION 9. 326 IAC 18-2-3, PROPOSED TO BE AMENDED AT 26 IR 2090, SECTION 89, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-2-3 Initial training course requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 3. (a) In order to qualify for approval, an asbestos inspector training course shall include a written examination as outlined in section 5 of this rule and meet the following

requirements:

(1) An asbestos inspector training course shall be at least three (3) days in duration and shall include **the following:**

- (A) Lectures.
- (B) Demonstrations.
- (C) Four (4) hours of hands-on training.
- (C) Individual respirator fit testing, **and**
- (D) A course review.

Audiovisual materials shall be used to complement lectures where appropriate.

(2) An asbestos inspector training course shall adequately address the following topics:

(A) Background information on asbestos to include the following:

- (i) The identification of asbestos and examples and discussion of the uses and locations of asbestos in buildings.
- (ii) The physical appearance of asbestos.

(B) Potential health effects related to asbestos exposure to include the following:

- (i) The nature of asbestos-related diseases.
- (ii) Routes of exposure.
- (iii) Dose-response relationships and the lack of a safe exposure level.
- (iv) The synergistic effect between cigarette smoking and asbestos exposure.
- (v) The latency period for asbestos-related diseases.
- (vi) A discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(C) Functions, qualifications, and role of inspectors to include **discussion of** the following:

- (i) ~~Discussion of~~ Prior experience and qualifications for inspectors and management planners.
- (ii) ~~Discussion of~~ The functions of an accredited inspector as compared to those of an accredited management planner.
- (iii) ~~Discussion of~~ The inspection process, including inventory of ACM and physical assessment.

(D) Legal liabilities and defenses to include the following:

- (i) Responsibilities of the inspector and management planner.
- (ii) A discussion of comprehensive general liability policies, claims-made and occurrence policies, **and** environmental and pollution liability policy clauses.
- (iii) State liability insurance requirements.
- (iv) Bonding and the relationship of insurance availability to bond availability.

(E) Understanding building systems to include the following:

- (i) The interrelationship between building systems, including an overview of common building physical plan layout.
- (ii) Heat, ventilation, and air conditioning (HVAC) system types, physical organization, and where asbestos

- is found on HVAC components.
- (iii) Building mechanical systems, their types and organization, and where to look for asbestos on such systems.
- (iv) Inspecting electrical systems, including appropriate safety precautions.
- (v) Reading blueprints and as-built drawings.
- (F) Public, employee, or building occupant relations to include the following:
 - (i) Notification of employee organizations about the inspection.
 - (ii) Signs to warn building occupants.
 - (iii) Tact in dealing with occupants and the press.
 - (iv) Scheduling of inspections to minimize disruption.
 - (v) Education of building occupants about actions being taken.
- (G) Preinspection planning and review of previous inspection records to include the following:
 - (i) Scheduling the inspection and obtaining access.
 - (ii) Building record review.
 - (iii) Identification of probable homogeneous areas from blueprints or as-built drawings.
 - (iv) Consultation with maintenance or building personnel.
 - (v) Review of previous inspection, sampling, and abatement records of a building.
 - (vi) The role of the inspector in exclusions for previously performed inspections.
- (H) Inspecting for friable and nonfriable ACM and assessing the condition of friable ACM to include the following:
 - (i) Procedures to follow in conducting visual inspections for friable and nonfriable ACM.
 - (ii) Types of building materials that may contain asbestos.
 - (iii) Touching materials to determine friability.
 - (iv) Open return air plenums and their importance in HVAC systems.
 - (v) Assessing damage, significant damage, potential damage, and potential significant damage.
 - (vi) Amount of suspected ACM, both in total quantity and as a percentage of the total area.
 - (vii) Type of damage.
 - (viii) Accessibility.
 - (ix) Material's potential for disturbance.
 - (x) Known or suspected causes of damage or significant damage.
 - (xi) Deterioration as assessment factors.
- (I) Bulk sampling or documentation of asbestos in schools to include the following:
 - (i) Detailed discussion of the "A Simplified Sampling Scheme for Friable Surfacing Materials (U.S. EPA 560/5-85-030a October 1985)*".
 - (ii) Techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials.
 - (iii) Sampling of nonfriable materials.
 - (iv) Techniques for bulk sampling.
 - (v) Sampling equipment the inspector should use.
 - (vi) Patching or repair of damage done in sampling.
 - (vii) An inspector's repair kit.
 - (viii) Discussion of polarized light microscopy.
 - (ix) Choosing an accredited laboratory to analyze bulk samples.
 - (x) Quality control and quality assurance procedures.
- (J) Inspector respiratory protection and personal protective equipment to include the following:
 - (i) Classes and characteristics of respirator types.
 - (ii) Limitations of respirators.
 - (iii) Proper selection, inspection, donning, use, maintenance, and storage procedures for respirators.
 - (iv) Methods for field testing of the facepiece-to-mouth seal (positive and negative pressure fitting tests).
 - (v) Qualitative and quantitative fit testing procedures.
 - (vi) Variability between field and laboratory protection factors.
 - (vii) Factors that alter respirator fit, for example, facial hair.
 - (viii) The components of a proper respiratory protection program.
 - (ix) Selection and use of personal protective clothing.
 - (x) Use, storage, and handling of nondisposable clothing.
- (K) Record keeping and writing the inspection report to include the following:
 - (i) Labeling of samples and keying sample identification to sampling location.
 - (ii) Recommendations on sample labeling.
 - (iii) Detailing of ACM inventory.
 - (iv) Photographs of selected sampling areas and examples of ACM condition.
 - (v) Information required for inclusion in the management plan by Section 203(i)(1) TSCA Title II*.
- (L) Regulatory review to include the following:
 - (i) National Emission Standards for Hazardous Air Pollutants (NESHAP) found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
 - (ii) U.S. EPA worker protection rule found at 40 CFR 763, Subpart G*.
 - (iii) TSCA Title II*.
 - (iv) Occupational Safety and Health Administration (OSHA) asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration Occupational Exposure to Asbestos).
 - (v) OSHA respirator requirements found at 29 CFR 1910.134*.
 - (vi) The friable ACM in schools rule found at 40 CFR 763, Subpart E*.
 - (vii) Applicable state and local regulations and differences in federal or state requirements where they apply and the effects, if any, on public and nonpublic schools or commercial or public buildings.
 - (viii) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4~~, **329 IAC 10-8.1**, and any local or municipal regulations, ordinances, or other local laws

Proposed Rules

pertaining to asbestos.

(M) Field trip comprised of a walk-through inspection to include the following:

- (i) On-site discussion on information gathering and determination of sampling locations.
- (ii) On-site practice in physical assessment.
- (iii) Classroom discussion of field exercise.

(N) A course review of the key aspects of the training course.

(b) In order to qualify for approval, an asbestos management planner training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) Verify that each attendee possesses a current and valid inspector training certificate prior to admission to the management planner training course.

(2) An asbestos management planner training course shall be at least two (2) days in duration and shall include **the following:**

- (A) Lectures.
- (B) Demonstrations. ~~and~~
- (C) A course review.

Audiovisual materials shall be used to complement lectures where appropriate.

(3) An asbestos management planner training course shall adequately address the following topics:

(A) Course overview to include the following:

- (i) The role of the management planner.
- (ii) Operations and maintenance programs.
- (iii) Setting work priorities.
- (iv) Protection of building occupants.

(B) Evaluation and interpretation of survey results to include the following:

- (i) Review of TSCA Title II requirements for inspection and management plans as given in Section 203(i)(1) of TSCA Title II*.
- (ii) Interpretation of field data and laboratory results.
- (iii) Comparison between field inspector's data sheet with laboratory results and site survey.

(C) Hazard assessment to include the following:

- (i) Amplification of the difference between physical assessment and hazard assessment.
- (ii) The role of the management planner in hazard assessment.
- (iii) Explanation of significant damage, damage, potential damage, and potential significant damage.
- (iv) Use of a description (or decision tree) code for assessment of ACM.
- (v) Assessment of friable ACM.
- (vi) Relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment.

(D) Legal implications to include the following:

- (i) Liability.

(ii) Insurance issues specific to planners.

(iii) Liabilities associated with interim control measures and in-house maintenance, repair, and removal.

(iv) Use of results from previously performed inspections.

(E) Evaluation and selection of control options to include the following:

- (i) Overview of encapsulation, enclosure, interim operations and maintenance, and removal.
- (ii) Advantages and disadvantages of each method.
- (iii) Response actions described via a decision tree or other appropriate method.
- (iv) Work practices for each asbestos project.
- (v) Staging and prioritizing of work in both vacant and occupied buildings.
- (vi) The need for containment barriers and decontamination in asbestos projects.

(F) Role of other professionals to include the following:

- (i) Use of industrial hygienists, engineers, and architects in developing technical specifications for asbestos projects.
- (ii) Any requirements that may exist for architect sign-off of plans.
- (iii) Team approach to design of high quality job specifications.

(G) Developing an operations and maintenance plan to include the following:

- (i) Purpose of the plan.
- (ii) Discussion of applicable U.S. EPA guidance documents.
- (iii) What actions should be taken by custodial staff.
- (iv) Proper cleaning procedures.
- (v) Steam cleaning and high efficiency particulate aerosol (HEPA) vacuuming.
- (vi) Reducing disturbance of ACM.
- (vii) Scheduling operations and maintenance for off-hours.
- (viii) Rescheduling or canceling renovation in areas with ACM.
- (ix) Boiler room maintenance.
- (x) Disposal of ACM.
- (xi) In-house procedures for ACM-bridging and penetrating encapsulants.
- (xii) Pipe fittings.
- (xiii) Metal sleeves.
- (xiv) Polyvinyl chloride (PVC), canvas, and wet wraps.
- (xv) Muslin with straps.
- (xvi) Fiber mesh cloth.
- (xvii) Mineral wool and insulating cement.
- (xviii) Discussion of employee protection programs and staff training.
- (xix) Case study in developing an operations and maintenance plan (development, implementation process, and problems that have been experienced).

(H) Regulatory review to include the following:

- (i) OSHA asbestos construction standard found at 29

CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).

(ii) The NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.

(iii) U.S. EPA worker protection rule found at 40 CFR 763, Subpart G*.

(iv) TSCA Title II*.

(v) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4~~ **329 IAC 10-8.1**, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

(I) Record keeping for the management planner to include the following:

(i) Use of field inspector's data sheet along with laboratory results.

(ii) Ongoing record keeping as a means to track asbestos disturbance.

(iii) Procedures for record keeping.

(J) Assembling and submitting the management plan to include the following:

(i) Plan requirements in TSCA Title II, Section 203(i)(1)*.

(ii) The management plan as a planning tool.

(K) Financing abatement action to include the following:

(i) Economic analysis and cost estimates.

(ii) Development of cost estimates.

(iii) Present costs of abatement versus future operations and maintenance costs.

(iv) Grants and loans under the Asbestos School Hazard Abatement Act (20 U.S.C. 4011 et seq.)*.

(L) A course review of the key aspects of the training course.

(c) In order to qualify for approval, an asbestos project designer training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) An asbestos project designer training course shall be at least three (3) days in duration and shall include **the following:**

(A) Lectures.

(B) Demonstrations.

(C) A field trip. ~~and~~

(D) A course review.

Audiovisual materials shall be used to complement lectures where appropriate.

(2) An asbestos project designer training course shall adequately address the following topics:

(A) Background information on asbestos to include the following:

(i) Identification of asbestos.

(ii) Examples and discussion of the uses and locations of asbestos in buildings.

(iii) Physical appearance of asbestos.

(B) Potential health effects related to asbestos exposure to include the following:

(i) Nature of asbestos-related diseases.

(ii) Routes of exposure.

(iii) Dose-response relationships and the lack of a safe exposure level.

(iv) The synergistic effect between cigarette smoking and asbestos exposure.

(v) The latency period of asbestos-related diseases.

(vi) A discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(C) Overview of abatement construction projects to include the following:

(i) Abatement as a portion of a renovation project.

(ii) OSHA requirements for notification of other contractors on a multiemployer site 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).

(D) Safety system design specifications to include the following:

(i) Design, construction, and maintenance of containment barriers and decontamination enclosure systems.

(ii) Positioning of warning signs.

(iii) Electrical and ventilation system lock-out.

(iv) Proper working techniques for minimizing fiber release.

(v) Entry and exit procedures for the work area.

(vi) Use of wet methods.

(vii) Use of negative pressure exhaust ventilation equipment.

(viii) Use of HEPA vacuums.

(ix) Proper cleanup and disposal of asbestos.

(x) Work practices as they apply to encapsulation, enclosure, and repair.

(xi) Use of glove bags and a demonstration of glove bag use.

(xii) Proper techniques for initial cleaning.

(E) A field trip comprised of a visit to an abatement site or other suitable building site, including on-site discussions of abatement design, and building walk-through inspection, including discussion of rationale for the concept of functional spaces during the walk-through.

(F) Employee personal protective equipment to include the following:

(i) Classes and characteristics of respirator types.

(ii) Limitations of respirators.

(iii) Proper selection, inspection, donning, use, maintenance, and storage procedures.

(iv) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).

(v) Qualitative and quantitative fit testing procedures.

(vi) Variability between field and laboratory protection factors.

(vii) Factors that alter respirator fit, for example, facial

- hair.
- (viii) Components of a proper respiratory protection program.
- (ix) Selection and use of personal protective clothing.
- (x) Use, storage, and handling of nondisposable clothing.
- (G) Additional safety hazards encountered during abatement activities and how to deal with them, including the following:
 - (i) Electrical hazards.
 - (ii) Heat stress.
 - (iii) Air contaminants other than asbestos.
 - (iv) Fire and explosion hazards.
- (H) Fiber aerodynamics and control to include the following:
 - (i) Aerodynamic characteristics of asbestos fibers.
 - (ii) Importance of proper containment barriers.
 - (iii) Settling time for asbestos fibers.
 - (iv) Wet methods in abatement.
 - (v) Aggressive air monitoring following abatement.
 - (vi) Aggressive air movement and negative pressure exhaust ventilation as a cleanup method.
- (I) Designing abatement solutions to include the following:
 - (i) Discussions of removal, enclosure, and encapsulation methods.
 - (ii) Asbestos waste disposal.
- (J) Final clearance process to include the following:
 - (i) Discussion of the need for a written sampling rationale for aggressive final air clearance.
 - (ii) Requirements of a complete visual inspection.
 - (iii) The relationship of the visual inspection to final air clearance.
- (K) Budgeting and cost estimation to include the following:
 - (i) Development of cost estimates.
 - (ii) Present cost of abatement versus future operations and maintenance costs.
 - (iii) Setting priorities for abatement jobs to reduce costs.
- (L) Writing abatement specifications to include the following:
 - (i) Preparation of and need for a written project design.
 - (ii) Means and methods specifications versus performance specifications.
 - (iii) Design of abatement in occupied buildings.
 - (iv) Modification of guide specifications to a particular building.
 - (v) Worker and building occupant health and medical considerations.
 - (vi) Replacement of ACM with nonasbestos substitutes.
- (M) Preparing abatement drawings to include the following:
 - (i) Significance and need for drawings.
 - (ii) Use of as-built drawings.
 - (iii) Use of inspection photographs and on-site reports.
 - (iv) Methods of preparing abatement drawings.
 - (v) Diagramming containment barriers.
 - (vi) Relationship of drawings to design specifications.
 - (vii) Particular problems in abatement drawings.
- (N) Contract preparation and administration.
- (O) Legal liabilities and defenses to include the following:
 - (i) Insurance considerations.
 - (ii) Bonding.
 - (iii) Hold harmless clauses.
 - (iv) Use of abatement contractor's liability insurance.
 - (v) Claims-made versus occurrence policies.
- (P) Replacement of asbestos with asbestos-free substitutes.
- (Q) Role of other consultants to include the following:
 - (i) Development of technical specification sections by industrial hygienists or engineers.
 - (ii) The multidisciplinary team approach to abatement design.
- (R) Occupied buildings to include the following:
 - (i) Special design procedures required in occupied buildings.
 - (ii) Education of occupants.
 - (iii) Extra monitoring recommendations.
 - (iv) Staging of work to minimize occupant exposure.
 - (v) Scheduling of renovation to minimize exposure.
- (S) Relevant federal, state, and local regulatory requirements with a discussion of procedures and standards, including, but not limited to, the following:
 - (i) Requirements of TSCA Title II*.
 - (ii) The NESHAP, found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
 - (iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.
 - (iv) EPA worker protection rule found at 40 CFR 763, Subpart G*.
 - (v) OSHA asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).
 - (vi) OSHA hazard communication standard found at 29 CFR 1926.59*.
 - (vii) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4~~, **329 IAC 10-8.1**, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.
- (T) A course review of the key aspects of the training course.
 - (d) In order to qualify for approval, an asbestos project supervisor or contractor training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:
 - (1) An asbestos project supervisor or contractor training course shall be at least five (5) days in duration and shall include **the following**:
 - (A) Lectures.
 - (B) Demonstrations.
 - (C) At least fourteen (14) hours of hands-on training.

- (D) Individual respirator fit testing. ~~and~~
- (E) A course review.

Audiovisual materials shall be used to complement lectures where appropriate.

(2) An asbestos project supervisor or contractor training course shall adequately address the following topics:

(A) Physical characteristics of asbestos and ACM to include the following:

- (i) Identification of asbestos.
- (ii) Aerodynamic characteristics.
- (iii) Typical uses.
- (iv) Physical appearance.
- (v) A review of hazard assessment considerations.
- (vi) A summary of abatement control options.

(B) Potential health effects related to asbestos exposure to include the following:

- (i) Nature of asbestos-related diseases.
- (ii) Routes of exposure.
- (iii) Dose-response relationships and the lack of a safe exposure level.
- (iv) Synergism between cigarette smoking and asbestos exposure.
- (v) Latency period for diseases.

(C) Employee personal protective equipment to include the following:

- (i) Classes and characteristics of respirator types.
- (ii) Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.
- (iii) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
- (iv) Qualitative and quantitative fit testing procedures.
- (v) Variability between field and laboratory protection factors.
- (vi) Factors that alter respirator fit, for example, facial hair.
- (vii) The components of a proper respiratory protection program.
- (viii) Selection and use of personal protective clothing.
- (ix) Use, storage, and handling of nondisposable clothing.
- (x) Regulations covering personal protective equipment.

(D) State-of-the-art work practices to include the following:

- (i) Proper work practices for asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
- (ii) Positioning of warning signs.
- (iii) Electrical and ventilation system lock-out.
- (iv) Proper working techniques for minimizing fiber release.
- (v) Use of wet methods.
- (vi) Use of negative pressure exhaust ventilation equipment.
- (vii) Use of HEPA vacuums.
- (viii) Proper cleanup and disposal procedures.

(ix) Work practices for removal, encapsulation, enclosure, and repair of ACM.

(x) Emergency procedures for unplanned releases.

(xi) Potential exposure situations.

(xii) Transport and disposal procedures.

(xiii) Recommended and prohibited work practices.

(xiv) New abatement-related techniques and methodologies.

(E) Personal hygiene to include the following:

(i) Entry and exit procedures for the work area.

(ii) Use of showers.

(iii) Avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.

(iv) Potential exposures, such as family exposure, shall also be included.

(F) Hazards encountered during abatement activities and how to deal with them, including the following:

(i) Electrical hazards.

(ii) Heat stress.

(iii) Air contaminants other than asbestos.

(iv) Fire and explosion hazards.

(v) Scaffold and ladder hazards.

(vi) Slips, trips, and falls.

(vii) Confined spaces.

(G) Medical monitoring to include the following:

(i) OSHA requirements for a pulmonary function test.

(ii) Chest x-ray and a medical history for each employee.

(H) Air monitoring procedures to determine airborne concentrations of asbestos fibers to include the following:

(i) A description of aggressive sampling.

(ii) Sampling equipment and methods.

(iii) Reasons for air monitoring.

(iv) Types of samples.

(v) Interpretation of results, specifically from analyses performed by polarized light, phase-contrast, and electron microscopy.

(I) Relevant federal, state, and local regulatory requirements with a discussion of procedures and standards to include the following:

(i) Requirements of TSCA Title II*.

(ii) NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.

(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.

(iv) OSHA asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).

(v) EPA worker protection rule found at 40 CFR 763, Subpart G*.

(vi) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4~~, **329 IAC 10-8.1**, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

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(J) Respiratory protection programs and medical surveillance programs.

(K) Insurance and liability issues to include the following:

- (i) Contractor issues.
- (ii) Workers' compensation coverage and exclusions.
- (iii) Third-party liabilities and defenses.
- (iv) Insurance coverage and exclusions.

(L) Record keeping for asbestos abatement projects to include the following:

- (i) Records required by federal, state, and local regulations.
- (ii) Records recommended for legal and insurance purposes.

(M) Supervisory techniques for asbestos abatement activities to include supervisory practices ~~which~~ **that** enforce and reinforce the required work practices and discourage unsafe work practices.

(N) Contract specifications to include a discussion of key elements that are included in contract specifications.

(O) A course review of the key aspects of the training course.

(e) In order to qualify for approval, an asbestos worker training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

- (1) An asbestos worker training course shall be at least four (4) days in duration and shall include **the following**:

- (A) Lectures.
- (B) Demonstrations.
- (C) At least fourteen (14) hours of hands-on training.
- (D) Individual respirator fit testing. ~~and~~
- (E) A course review.

Audiovisual materials shall be used to complement lectures where appropriate.

(2) An asbestos worker training course shall adequately address the following topics:

(A) Physical characteristics of asbestos to include the following:

- (i) Identification of asbestos.
- (ii) Aerodynamic characteristics.
- (iii) Typical uses.
- (iv) Physical appearance.
- (v) A summary of abatement control options.

(B) Potential health effects related to asbestos exposure to include the following:

- (i) Nature of asbestos-related diseases.
- (ii) Routes of exposure.
- (iii) Dose-response relationships and the lack of a safe exposure level.
- (iv) Synergism between cigarette smoking and asbestos exposure.
- (v) Latency period for diseases.
- (vi) Discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(C) Employee personal protective equipment to include the following:

- (i) Classes and characteristics of respirator types.
- (ii) Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.
- (iii) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
- (iv) Qualitative and quantitative fit testing procedures.
- (v) Variability between field and laboratory protection factors.
- (vi) Factors that alter respirator fit, for example, facial hair.
- (vii) The components of a proper respiratory protection program.
- (viii) Selection and use of personal protective clothing, use, storage, and handling of nondisposable clothing.
- (ix) Regulations covering personal protective equipment.

(D) State-of-the-art work practices to include the following:

- (i) Proper asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
- (ii) Positioning of warning signs.
- (iii) Electrical and ventilation system lock-out.
- (iv) Proper working techniques for minimizing fiber release.
- (v) Use of wet methods.
- (vi) Use of negative pressure ventilation equipment.
- (vii) Use of HEPA vacuums.
- (viii) Proper cleanup and disposal procedures.
- (ix) Work practices for removal, encapsulation, enclosure, and repair.
- (x) Emergency procedures for sudden releases.
- (xi) Potential exposure situations.
- (xii) Transport and disposal procedures.
- (xiii) Recommended and prohibited work practices.

(E) Personal hygiene to include the following:

- (i) Entry and exit procedures for the work area.
- (ii) Use of showers.
- (iii) Avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
- (iv) Potential exposures, such as family exposure.

(F) Hazards encountered during abatement activities and how to deal with them, including the following:

- (i) Electrical hazards.
- (ii) Heat stress.
- (iii) Air contaminants other than asbestos.
- (iv) Fire and explosion hazards.
- (v) Scaffold and ladder hazards.
- (vi) Slips, trips, and falls.
- (vii) Confined spaces.

(G) Medical monitoring to include the following:

- (i) OSHA and U.S. EPA requirements for a pulmonary function test.
- (ii) Chest x-rays and a medical history for each employee.

(H) Air monitoring to include procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it.

(I) Relevant federal, state, and local regulatory requirements, procedures, and standards with particular attention directed at relevant U.S. EPA, OSHA, and state regulations concerning asbestos abatement workers with a discussion of procedures and standards to include the following:

(i) Requirements of TSCA Title II*.

(ii) NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.

(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.

(iv) OSHA asbestos construction standard found at 29 CFR 1926.1101*.

(v) EPA worker protection rule found at 40 CFR 763, Subpart G*.

(vi) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4~~, **329 IAC 10-8.1**, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

(J) Establishment of respiratory protection programs.

(K) A course review of the key aspects of the training course.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board*; 326 IAC 18-2-3; filed Sep 23, 1988, 1:45 p.m.: 12 IR 1250; filed Jul 6, 1989, 1:15 p.m.: 12 IR 2028; errata filed Jul 18, 1989, 5:00 p.m.: 12 IR 2286; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2116; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2745; errata filed Jul 5, 1995, 10:00 a.m.: 18 IR 2795; filed May 12, 1998, 9:15 a.m.: 21 IR 3758; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1572)

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 September 1, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 18-1 and 326 IAC 18-2.

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 Suzanne Whitmer, Rule Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855, (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe

Assistant Commissioner

Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule

LSA Document #04-44

DIGEST

Readopts 326 IAC 2-5.1-1, 326 IAC 2-5.1-2, 326 IAC 2-5.5, 326 IAC 2-6.1, and 326 IAC 2-9. Effective 30 days after filing with the secretary of state.

HISTORY

Section 7 Notice and Notice of First Hearing: March 1, 2004, Indiana Register (27 IR 2082).

Date of First Hearing: May 5, 2004.

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 draft rule published on March 1, 2004, at 27 IR 2-82, 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

The Indiana Department of Environmental Management (IDEM) requested public comment from March 1, 2004, through March 31,

2004, on IDEM's draft rule language. No comments were received during the comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On May 5, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the readoption of 326 IAC 2-5.1-1, 326 IAC 2-5.1-2, 326 IAC 2-5.5, 326 IAC 2-6.1, and 326 IAC 2-9. Comments were made by the following party:

Monaco Coach Corporation (MCC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: In 326 IAC 2-9-3(3)(D), the requirement for a monthly summary of HAP emissions should be deleted because it serves no purpose and removing it would reduce the record keeping burden. The requirement for a monthly summation of VOC should be sufficient to verify compliance with the rule. The annual notice in 326 IAC 2-9-3 that is required to be submitted to IDEM currently requires a monthly VOC total and 12-month VOC emissions to be reported. If the intent of the HAP emissions tracking is to determine applicability to federal guidelines for MACT, the open applicability determination for requirements in this requirement would not serve that purpose. (MCC)

Response: This and several of the following comments raise specific points about provisions of Article 2. There is an open rulemaking, the Article 2 Fix-up rule (LSA #02-188), which will be addressing this section. This will allow for a review of all the source specific operating agreement recordkeeping requirements at the same time to ensure consistency. It will also allow this rulemaking to conclude, thus ensuring that many small sources will continue to be able to use these permitting options.

Comment: In 326 IAC 2-9-4, Section 4(b)(3) should be deleted in its entirety. Within that section, it asks the source to verify that 100% of the time there are no, or zero, visible emissions occurring. Physically, if you have any kind of woodworking operation, that is not possible. There is always going to be some type of visible emission. They're not achievable in woodworking operations. The requirement does not specify what operation is required to have zero visible emissions. (MCC)

Response: This issue is better considered in the Article 2 Fix-up rule (LSA #02-188), which will be addressing this section. IDEM needs to ensure an approach that is consistent, therefore, needs to review the impact of the suggested change.

Comment: Section 4(c), 4(d), 4(e), and 4(f) have the same language within them, and should be revised to remove daily VE, or visible emissions. Readings, monitoring or record keeping should be consistent with exposure risk and reliability of the control equipment. Baghouses are extremely reliable equipment and the exposure risk with dust is very low. (MCC)

Response: The daily visible emissions requirements should be kept in order to demonstrate compliance with the 10% opacity requirement.

Comment: Visible operations, observations, and records shall be required at a reasonable frequency to determine the proper operation of equipment. Because equipment is so reliable, and because there is normal work activities in the areas, it should identify excess emissions. The record keeping burden of daily monitoring is unnecessary, and we recommend that you amend in more reasonable frequency justifications. Daily visible emissions create volumes of paperwork with no benefit. Somebody that is doing a daily VE is typically a maintenance person, or somebody within the plant that is trained to do the activity. They have a lot of other responsibilities, and it is very difficult to keep somebody focused. Once they're required to do it and they do it day in and day out, there just comes a point where they grab a piece of

paperwork and start just checking boxes, and it's hard to keep focused on the task. Properly performed VE observations are time consuming, six minutes plus per stack, and it's excessive relating to the risk. (MCC)

Response: It is necessary to conduct compliance monitoring in order to determine if there are excess emissions. It is important to be able to determine how the unit is operating in order to prevent problems and make the necessary adjustments. IDEM does not feel that the once per day monitoring requirement is unreasonable.

Comment: Section 4(c), 4(d), 4(e), and 4(f) should also have a provision for no visible emissions monitoring requirements when baghouses are vented back into a building. There is a lot of industries within the woodworking field that do not have a physical stack outside of the building, it all vents back into the building itself. The way the current rule is written, we would still have to have somebody go stand outside and document that there's no emissions occurring on something that's being vented inside the building. Also, if a baghouse fails when it's vented inside a building, you're going to move on it pretty quickly. (MCC)

Response: This issue is better considered in the Article 2 Fix-up rule (LSA #02-188), which will be addressing this section. IDEM needs to ensure an approach that is protective of public health and the environment, therefore, needs to review the impact of the suggested change.

326 IAC 2-5.1-1	326 IAC 2-9-1
326 IAC 2-5.1-2	326 IAC 2-9-2.5
326 IAC 2-5.5-1	326 IAC 2-9-3
326 IAC 2-5.5-2	326 IAC 2-9-4
326 IAC 2-5.5-3	326 IAC 2-9-5
326 IAC 2-5.5-4	326 IAC 2-9-6
326 IAC 2-5.5-5	326 IAC 2-9-7
326 IAC 2-5.5-6	326 IAC 2-9-8
326 IAC 2-6.1-1	326 IAC 2-9-9
326 IAC 2-6.1-2	326 IAC 2-9-10
326 IAC 2-6.1-3	326 IAC 2-9-11
326 IAC 2-6.1-4	326 IAC 2-9-12
326 IAC 2-6.1-5	326 IAC 2-9-13
326 IAC 2-6.1-6	326 IAC 2-9-14
326 IAC 2-6.1-7	

SECTION 1. 326 IAC 2-5.1-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.1-1 Exemptions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. The following shall be exempt from the requirements of this rule:

- (1) New sources that meet the criteria for an exemption under 326 IAC 2-1.1-3 or not specifically required to obtain a registration or permit under this rule.
- (2) Existing sources operating pursuant to a permit issued under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.
- (3) Existing sources operating pursuant to a source specific operating agreement under 326 IAC 2-9.
- (4) Existing sources operating pursuant to a permit by rule under 326 IAC 2-10 or 326 IAC 2-11.

(Air Pollution Control Board; 326 IAC 2-5.1-1; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1008)

SECTION 2. 326 IAC 2-5.1-2 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.1-2 Registrations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 4-21.5-3-4; IC 13-15-4-9; IC 13-17

Sec. 2. (a) On and after the effective date of this rule, this section applies to the following new sources:

(1) Sources with a potential to emit within the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM₁₀).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:

(i) Sulfur dioxide (SO₂).

(ii) Nitrogen oxides (NO_x).

(C) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of volatile organic compounds (VOC) for sources not described in clause (D).

(D) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for sources that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(E) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(F) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(G) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H₂S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

(2) Any source that:

(A) is subject to 326 IAC 20-8; and

(B) consists of only decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent.

(b) No person subject to subsection (a) shall construct or operate any new source subject to this section without registering the new source with the commissioner.

(c) The registrant shall submit an application in accordance with this rule to the commissioner. The application shall include the following information:

(1) Company name and address.

(2) Descriptive information as follows:

(A) A description of the nature and location of the proposed construction or modification.

(B) The design capacity and typical operating schedule of the proposed construction or modification.

(C) A description of the source and the emissions unit or units comprising the source.

(D) A description of any emission control equipment, including design specifications.

(3) A schedule for construction or modification of the source.

(4) Information on the nature and amount of pollutants to be emitted and any other information determined by the commissioner as necessary to demonstrate compliance with the ambient air quality standards.

(5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable state air pollution control rules and the requirements of the CAA. Such signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(d) Upon receipt of the information requested, the commissioner shall make a final determination within the time period described under 326 IAC 2-1.1-8.

(e) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

(1) do not contain adequate information for the commissioner to process the application; or

(2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within sixty (60) days of receipt of the notice of deficiency. If the additional information is not submitted within sixty (60) days, or the additional time provided by the commissioner, the application may be denied in accordance with IC 13-15-4-9.

(f) A registration issued by the commissioner shall include terms and conditions that include all of the following:

(1) Identification of any and all applicable requirements.

(2) A physical description of the emissions unit or units and operating information consistent with the application information.

(3) A requirement that an authorized individual provide an annual notice to the department that the source is in operation

and in compliance with the registration.

(4) An approval to operate in accordance with 326 IAC 2-5.5.

(g) A registration issued by the commissioner may include terms and conditions that require monitoring, record keeping, and reporting as necessary to assure compliance with all applicable requirements.

(h) The issuance of a registration shall not be subject to the public notice requirements under 326 IAC 2-1.1-6, but the commissioner shall provide for public notice pursuant to IC 4-21.5-3-4.

(i) The commissioner shall not issue a registration that limits a source's potential to emit. (*Air Pollution Control Board; 326 IAC 2-5.1-2; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1008*)

SECTION 3. 326 IAC 2-5.5-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The following shall be exempt from the requirements of this rule:

(1) Existing sources that meet the criteria for an exemption under 326 IAC 2-1.1-3 or are not specifically required to obtain a registration under this rule.

(2) Existing sources operating pursuant to one (1) of the following:

(A) A Part 70 permit under 326 IAC 2-7.

(B) A federally enforceable state operating permit (FESOP) under 326 IAC 2-8.

(C) A source specific operating agreement under 326 IAC 2-9.

(D) A permit by rule under 326 IAC 2-10.

(E) A permit by rule under 326 IAC 2-11.

(F) A minor source operating permit under 326 IAC 2-6.1.

(b) On and after the effective date of this rule, this rule applies to the following existing sources:

(1) Sources with a potential to emit within the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM₁₀).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:

(i) Sulfur dioxide (SO₂).

(ii) Nitrogen oxides (NO_x).

(C) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of volatile organic compounds (VOC) for sources that are not described in

clause (D).

(D) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for sources that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(E) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(F) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(G) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H₂S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

(2) Any existing source that:

(A) is subject to 326 IAC 20-8; and

(B) consists of only decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent.

(c) No person subject to subsection (b) shall operate an existing source subject to this rule without registering the source with the commissioner. (*Air Pollution Control Board; 326 IAC 2-5.5-1; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1012*)

SECTION 4. 326 IAC 2-5.5-2 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-2 Compliance schedule

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 2. (a) Any chrome electroplating source that meets the applicability criteria under section 1(b)(2) of this rule shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule.

(b) Any existing source not described by subsection (a) that has a valid air registration shall apply for approval under this rule no later than twenty-four (24) months from the effective date of this rule.

(c) Any existing source not described by subsection (a) that does not have a valid air registration shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule. (*Air Pollution Control Board; 326 IAC 2-5.5-2; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1012*)

SECTION 5. 326 IAC 2-5.5-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-3 Application requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-4-9; IC 13-17

Sec. 3. (a) Any person required to prepare an application under section 1(b) of this rule shall prepare and submit a permit application to the commissioner in accordance with this section.

(b) The application shall include the following information:

(1) Company name and address.

(2) Descriptive information as follows:

(A) A description of the nature and location of the proposed construction or modification.

(B) The design capacity and typical operating schedule of the proposed construction or modification.

(C) A description of the source and the emissions unit or units comprising the source.

(D) A description of any emission control equipment, including design specifications.

(3) A schedule for construction or modification of the source.

(4) Information on the nature and amount of pollutants to be emitted and any other information determined by the commissioner as necessary to demonstrate compliance with the ambient air quality standards.

(5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable state air pollution control rules and the requirements of the CAA. Such signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(c) Upon receipt of the information requested, the commissioner shall make a final determination within the time period described under 326 IAC 2-1.1-8.

(d) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

(1) do not contain adequate information for the commissioner to process the application; or

(2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within sixty (60) days of receipt of the notice of deficiency. If the additional information is not submitted within sixty (60) days, or the additional time provided by the commissioner, the application may be denied in accordance with IC 13-15-4-9. (*Air Pollution Control Board; 326 IAC 2-5.5-3; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1012*)

SECTION 6. 326 IAC 2-5.5-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-4 Registration content

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 4. (a) A registration issued by the commissioner shall include terms and conditions that include all of the following:

(1) Identification of any and all applicable requirements.

(2) A physical description of the emissions unit or units and operating information consistent with the application information.

(3) A requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the registration.

(b) A registration issued by the commissioner may include terms and conditions that require monitoring, record keeping, and reporting as necessary to assure compliance with all applicable requirements.

(c) The commissioner shall not issue a registration that limits a source's potential to emit. (*Air Pollution Control Board; 326 IAC 2-5.5-4; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1013*)

SECTION 7. 326 IAC 2-5.5-5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-5 Public notice

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 4-21.5-3-4; IC 13-15; IC 13-17

Sec. 5. The issuance of a registration shall not be subject to the public notice requirements under 326 IAC 2-1.1-6, but the commissioner shall provide for public notice pursuant to IC 4-21.5-3-4. (*Air Pollution Control Board; 326 IAC 2-5.5-5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1013*)

SECTION 8. 326 IAC 2-5.5-6 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-5.5-6 Source modification

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 6. (a) Any person proposing to construct new emissions units, modify existing emissions units, or otherwise modify the source as described in this section shall submit an application or notification in accordance with this rule.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof if the repair or replacement:

(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or

replaced;

(2) is not a major modification under 326 IAC 2-2-1, 326 IAC 2-3-1, or 326 IAC 2-4.1; and

(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a permit or registration revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or registration revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) An application or notification required under this section shall contain the following:

- (1) The information required under section 3(b) of this rule.
- (2) Identification of the applicable requirements to which the source is newly subject as a result of the change, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements as appropriate.

(d) Notwithstanding the public participation requirements under 326 IAC 2-1.1-6, the following changes shall be designated as notice-only changes and shall not require public notice or prior approval by the commissioner:

- (1) Changes correcting typographical errors.
- (2) Minor administrative changes such as a change in the name, address, or telephone number of any person identified in a permit or a change in descriptive information concerning the source or emissions unit or units.
- (3) Changes in ownership or operational control of a source.
- (4) Modifications that would require more frequent monitoring or reporting.
- (5) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not result in an increase in the potential to emit any regulated pollutant greater than the thresholds in 326 IAC 2-5.1-3(a) or a significant change in the method or methods to demonstrate or monitor compliance.
- (6) Incorporation of newly applicable requirements as a result of a change in applicability.
- (7) Incorporation of alternative testing or compliance monitoring requirements that have received U.S. EPA approval under 40 CFR 60, 40 CFR 61, or 40 CFR 63*.
- (8) Incorporation of newly-applicable monitoring or testing requirements specified in 40 CFR 60, 40 CFR 61, or 40 CFR 63* that apply as the result of a change in applicability of those requirements to the source, including removal from the permit of monitoring or testing requirements that no longer apply as a result of the change in applicability.
- (9) Incorporation of test methods or monitoring requirements specified in an applicable requirement that the source may

use under the applicable requirement as an alternative to the testing or monitoring requirements contained in the permit.

(10) Modifications that have the potential to emit greater than or equal to one (1) ton per year but less than ten (10) tons per year of a single hazardous air pollutant (HAP) as defined under Section 112(b) of the CAA or greater than or equal to two and one-half (2.5) tons per year but less than twenty-five (25) tons per year of any combination of HAPs unless the modification would increase the potential to emit of the source above ten (10) tons per year of a single HAP or twenty-five (25) tons per year of any combination of HAPs.

(11) A modification of an existing source if the modification will replace or repair a part or piece of equipment in an existing process unless:

- (A) the modification results in the replacement or repair of an entire process;
- (B) the modification qualifies as a reconstruction of an entire process; or
- (C) the modification may result in an increase of actual emissions.

(12) Modifications that consist of emission units described under 326 IAC 2-1.1-3(d)(1) through 326 IAC 2-1.1-3(d)(31).

(e) Any person proposing to make a change or modification described in subsection (d) shall submit a notification concerning the change or modification within thirty (30) days of making the change or modification and shall include the information required under section 3(b) of this rule. The notification shall be sent by one (1) of the following means:

- (1) Certified mail.
- (2) Delivery by hand or express service.
- (3) Transmission by other equally reliable means of notification by the source to the commissioner.

(f) The commissioner shall revise the registration consistent with the following:

- (1) The commissioner shall revise the registration within thirty (30) days of receipt of the notification.
- (2) The commissioner shall send a copy of the revised registration to the registrant.
- (3) The registrant may implement the change or modification upon submittal of the notification.

(g) Any person proposing to make a change or modification not described in subsection (d) shall submit an application concerning the change or modification prior to making the change or modification and shall include the information under subsection (c).

(h) An application submitted in accordance with subsection (g) shall be processed as follows:

- (1) Within forty-five (45) days from receipt of an application for a minor permit revision, the commissioner shall do one (1) of the following:

(A) Approve the modification request and issue a revised registration incorporating the modification.

(B) Determine that the change or modification will increase the potential to emit of the source to a level that would require an operating permit under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

(C) Deny the modification request.

(2) If after review of the application, the commissioner determines that the change or modification will increase the potential to emit of the source to a level that would require an operating permit under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, the commissioner shall:

(A) notify the source of the requirement to obtain an operating permit;

(B) provide the source with the appropriate permit application forms; and

(C) issue or deny the operating permit pursuant to the requirements in 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, whichever is applicable.

(Air Pollution Control Board; 326 IAC 2-5.5-6; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1013; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106)

SECTION 9. 326 IAC 2-6.1-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-1 Exemptions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. The following shall be exempt from the requirements of this rule:

(1) Existing sources or modifications to existing sources that meet the criteria for an exemption under 326 IAC 2-1.1-3 or are not specifically required to obtain a permit under this rule shall be exempt from the requirements of this rule.

(2) Existing sources operating pursuant to one (1) of the following:

(A) A Part 70 permit under 326 IAC 2-7.

(B) A federally enforceable state operating permit (FESOP) under 326 IAC 2-8.

(C) A source specific operating agreement under 326 IAC 2-9.

(D) A permit by rule under 326 IAC 2-10.

(E) A permit by rule under 326 IAC 2-11.

(Air Pollution Control Board; 326 IAC 2-6.1-1; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015)

SECTION 10. 326 IAC 2-6.1-2 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-2 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 2. Except for sources required to have a Part 70 permit

as described in 326 IAC 2-7-2, sources in existence prior to December 25, 1998, and meeting any of the applicability criteria under 326 IAC 2-5.1-3(a) shall apply for an air operating permit as described in this rule. *(Air Pollution Control Board; 326 IAC 2-6.1-2; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1572)*

SECTION 11. 326 IAC 2-6.1-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-3 Compliance schedule

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 3. (a) Any chrome electroplating source that meets the applicability criteria under 326 IAC 2-5.1-3 or medical waste incinerator subject to 40 CFR 60, Subpart Ce*, shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule.

(b) Any existing source not described by subsection (a) that has a valid air operating permit must apply for approval under this rule no later than ninety (90) days prior to the expiration date of that permit, except for the following:

(1) A source subject to the Part 70 Operating Permit Program under 326 IAC 2-7.

(2) A source subject to the FESOP program under 326 IAC 2-8.

(3) A source subject to source specific operating agreement requirements under 326 IAC 2-9.

(4) A source subject to the requirements under 326 IAC 2-10 or 326 IAC 2-11.

(c) Any existing source not described by subsection (a) that does not have a valid air operating permit shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule.

(d) Submittal of a complete Part 70 operating permit application under 326 IAC 2-7-3 and 326 IAC 2-7-4, whether before or after the effective date of this rule, shall satisfy the requirements of this rule.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-6.1-3; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015; filed May 21, 2002, 10:20 a.m.: 25 IR 3062)*

SECTION 12. 326 IAC 2-6.1-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-4 Application requirements**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**Affected:** IC 13-15-4-9; IC 13-17

Sec. 4. (a) At a minimum, an application for a permit or permit revision shall include the following information:

- (1) The company name and address.
- (2) The following descriptive information:
 - (A) A description of the nature and location of the proposed construction or modification.
 - (B) The design capacity and typical operating schedule of the proposed construction or modification.
 - (C) A description of the source and the emissions unit or units comprising the source.
 - (D) A description of any emission control equipment, including design specifications.
- (3) A schedule for construction or modification of the source or emissions unit.
- (4) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA, the ambient air quality standards set forth in 326 IAC 1-3, or the prevention of significant deterioration maximum allowable increase under 326 IAC 2-2:
 - (A) Information on the nature and amount of the pollutant to be emitted, including an estimate of the potential to emit any regulated air pollutant.
 - (B) Estimates of offset credits as required under 326 IAC 2-3, for sources to be constructed in nonattainment areas.
 - (C) Monitoring, testing, reporting, and record keeping requirements.
 - (D) Any other information (including, but not limited to, the air quality impact) determined by the commissioner to be necessary to demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.
- (5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. Such signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(b) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

- (1) do not contain adequate information for the commissioner

to process the application; or

- (2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within sixty (60) calendar days of receipt of the notice of deficiency. If the additional information is not submitted within sixty (60) calendar days, or the additional time provided by the commissioner, the application may be denied in accordance with IC 13-15-4-9. (*Air Pollution Control Board; 326 IAC 2-6.1-4; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106*)

SECTION 13. 326 IAC 2-6.1-5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-5 Operating permit content**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**Affected:** IC 13-15; IC 13-17

Sec. 5. (a) Permits or permit revisions issued under this rule shall contain the following:

- (1) Emission limitations for any source or emissions unit that assure:
 - (A) the ambient air quality standards set forth in 326 IAC 1-3 will be attained or maintained, or both;
 - (B) the applicable prevention of significant deterioration maximum allowable increases set forth in 326 IAC 2-2 will be maintained;
 - (C) the public health will be protected; and
 - (D) compliance with the requirements of this title and the requirements of the CAA will be maintained.
- (2) Monitoring, testing, reporting, and record keeping requirements that assure reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA. Such requirements shall be in accordance with 326 IAC 3 and other applicable regulations.
- (3) A requirement that any revision of an emission limitation, monitoring, testing, reporting, and record keeping requirements shall be made consistent with the permit revision requirements under section 6 of this rule and the procedures under this rule.
- (4) A requirement that upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the commissioner, an authorized representative of the commissioner, or the U.S. EPA to perform the following at a reasonable time of day and in accordance with safety requirements:
 - (A) Enter upon the premises where a permitted source is located or emissions-related activity is conducted or where records required by a permit term or condition are kept.
 - (B) Have access to and copy any records that must be kept under this title or the conditions of a permit or operating permit revision.
 - (C) Inspect any operations, processes, emissions units (including monitoring and air pollution control equipment),

or practices regulated or required under a permit or operating permit revision.

(D) Sample or monitor substances or parameters for the purpose of assuring compliance with a permit, permit revision, or applicable requirement as authorized by the CAA and this title.

(E) Document alleged violations using cameras or video equipment. Such documentation may be subject to a claim of confidentiality under 326 IAC 17.1.

(5) A requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the permit or registration. The commissioner may request that the source provide an identification of all emission units that have been installed that are described under 326 IAC 2-1.1-3(d)(1) through 326 IAC 2-1.1-3(d)(31) with the annual notification.

(b) An operating permit issued under this rule may include terms and conditions that, notwithstanding the permit modification or revision requirements under section 6 of this rule, allow the source to make modifications without review, provided the operating permit includes terms and conditions that prescribe emissions limitations and standards applicable to specifically identified modifications or types of modifications which may occur during the term of the permit. Such permit conditions shall include the following:

(1) Emission limitations and standards necessary to assure compliance with the permit terms and conditions and all applicable requirements.

(2) Monitoring, testing, reporting, and record keeping requirements that assure all reasonable information is provided to evaluate continuous compliance with the permit terms and conditions, the underlying requirements of this title, and the CAA.

(c) The commissioner shall not issue a minor source operating permit that includes terms and conditions that limit the potential to emit of the source to below emission thresholds for a Part 70 permit. (*Air Pollution Control Board; 326 IAC 2-6.1-5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1016; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1572*)

SECTION 14. 326 IAC 2-6.1-6 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-6 Permit revisions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15-5; IC 13-17

Sec. 6. (a) Any person proposing to construct new emission units, modify existing emission units, or otherwise modify the source as described in this section shall submit an application or notification for a permit revision in accordance with this rule.

(b) Notwithstanding any other provision of this rule, the

owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof if the repair or replacement:

(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;

(2) is not a major modification under 326 IAC 2-2-1, 326 IAC 2-3-1, or 326 IAC 2-4.1; and

(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a permit or operating permit revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) An application or notification required under this section shall contain the following information:

(1) The company name and address.

(2) A description of the change and the emissions resulting from the change.

(3) An identification of the applicable requirements to which the source is newly subject as a result of the change, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.

(4) A schedule of compliance, if applicable.

(5) Each application or notification shall be signed by an authorized individual whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be modified and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. Such signature shall also constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(d) Notwithstanding the public participation requirements under 326 IAC 2-1.1-6, the following changes shall be designated as notice-only changes and shall not require public notice or prior approval by the commissioner:

(1) Changes correcting typographical errors.

(2) Minor administrative changes such as a change in the name, address, or telephone number of any person identified in a permit or a change in descriptive information concerning the source or emissions unit or units.

(3) Changes in ownership or operational control of a source.

(4) Modifications that would require more frequent monitoring or reporting.

(5) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not result in an increase in the potential to emit any regulated pollutant greater than the thresholds in 326 IAC 2-1.1-3(d)(1) or a significant change in the method or methods to demonstrate or monitor compliance.

(6) Incorporation of newly applicable requirements as a result of a change in applicability.

(7) Incorporation of alternative testing or compliance monitoring requirements that have received U.S. EPA approval under 40 CFR 60*, 40 CFR 61*, or 40 CFR 63*.

(8) Incorporation of newly-applicable monitoring or testing requirements specified in 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* that apply as the result of a change in applicability of those requirements to the source, including removal from the permit of monitoring or testing requirements that no longer apply as a result of the change in applicability.

(9) Incorporation of test methods or monitoring requirements specified in an applicable requirement that the source may use under the applicable requirement as an alternative to the testing or monitoring requirements contained in the permit.

(10) Modifications that have the potential to emit greater than or equal to one (1) ton per year but less than ten (10) tons per year of a single hazardous air pollutant (HAP) as defined under Section 112(b) of the CAA or greater than or equal to two and one-half (2.5) tons per year but less than twenty-five (25) tons per year of any combination of HAPs.

(11) A modification that meets the applicability criteria and can meet and will comply with the operational limitations for a source specific operating agreement under 326 IAC 2-9 or a general permit under 326 IAC 2-12.

(12) A modification of an existing source if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:

- (A) results in the replacement or repair of an entire process;
- (B) qualifies as a reconstruction of an entire process; or
- (C) may result in an increase of actual emissions.

(13) A modification that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in 326 IAC 2-2 or 326 IAC 2-3.

(14) A modification that is subject to the following reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*:

- (A) 40 CFR 60.40c*, except for modifications to a source

located in Lake County.

- (B) 40 CFR 60.110b*.

(C) 40 CFR 60.250*, except for modifications that include thermal dryers.

(D) 40 CFR 60.330* for modifications that only include emergency generators.

- (E) 40 CFR 60.670*.

- (F) 40 CFR 61.110*.

As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP. For modifications under clauses (A) through (D), the source must use the monitoring specified in the relevant RACT, NSPS, or NESHAP.

(15) A modification that is subject to the following new source performance standards (NSPSs), except for modifications that would be subject to 326 IAC 8-1-6:

- (A) 40 CFR 60.310*.

- (B) 40 CFR 60.390*.

- (C) 40 CFR 60.430*.

- (D) 40 CFR 60.440*.

- (E) 40 CFR 60.450*.

- (F) 40 CFR 60.460*.

- (G) 40 CFR 60.490*.

- (H) 40 CFR 60.540*.

- (I) 40 CFR 60.560*.

- (J) 40 CFR 60.580*.

- (K) 40 CFR 60.600*.

- (L) 40 CFR 60.660*.

- (M) 40 CFR 60.720*.

As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the NSPS. For modifications under clauses (A) through (H), the source must use the monitoring specified in the NSPS.

(e) Any person proposing to make a change or modification described in subsection (d) shall submit a notification concerning the change or modification within thirty (30) calendar days of making the change or modification and shall include the information required under subsection (c). The notification shall be sent by one (1) of the following means:

- (1) Certified mail.

- (2) Delivery by hand or express service.

- (3) Transmission by other equally reliable means of notification by the source to the commissioner.

(f) The commissioner shall revise the permit within thirty (30) days of receipt of the notification. The commissioner shall provide the permittee with a copy of the revised permit. Notwithstanding IC 13-15-5, the permit revision shall be effective immediately.

(g) The following modifications shall require minor permit revisions and shall require approval prior to construction and operation:

- (1) Modifications that would reduce the frequency of any

monitoring or reporting required by a permit condition or applicable requirement.

(2) The addition of a portable source or relocation of a portable source to an existing source, if the addition or relocation would require a change to any permit terms or conditions.

(3) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not increase the potential to emit any regulated pollutant greater than the thresholds under subdivision (4), but requires a significant change in the method or methods to demonstrate or monitor compliance.

(4) Modifications that would have a potential to emit within the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM₁₀).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:

- (i) Sulfur dioxide (SO₂).
- (ii) Nitrogen oxides (NO_x).
- (iii) Volatile organic compounds (VOC) for modifications that are not described in clause (C).

(C) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for modifications that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(D) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(E) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(F) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

- (i) Hydrogen sulfide (H₂S).
- (ii) Total reduced sulfur (TRS).
- (iii) Reduced sulfur compounds.
- (iv) Fluorides.

(5) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than hazardous air pollutants, ten (10) tons per year of any single hazardous air pollutant as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of hazardous air pollutants by complying with one (1) of the following constraints:

- (A) Limiting total annual solvent usage or maximum volatile organic compound content, or both.
- (B) Limiting annual hours of operation of the process or business.
- (C) Using a particulate air pollution control device as follows:

(i) Achieving and maintaining ninety-nine percent (99%) efficiency.

(ii) Complying with a no visible emission standard.

(iii) The potential to emit before air pollution controls does not exceed major source thresholds for federal permitting programs.

(iv) Certifying to the commissioner that the air pollution control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of particulate matter (PM) or fifteen (15) tons per year of particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM₁₀).

(D) Limiting individual fuel usage and fuel type for a combustion source.

(E) Limiting raw material throughput or sulfur content of raw materials, or both.

(6) A modification that is not described under subsection (d)(14) or (d)(15) and is subject to a RACT, a NSPS, or a NESHAP, and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.

(7) A change for which a source requests an emission limit to avoid 326 IAC 8-1-6.

(h) Minor permit revision procedures are as follows:

(1) Any person proposing to make a modification described in subsection (g) shall submit an application concerning the modification and shall include the information under subsection (c).

(2) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has revised the permit.

(3) Within forty-five (45) calendar days from receipt of an application for a minor permit revision, the commissioner shall do one (1) of the following:

(A) Approve the minor permit revision request.

(B) Deny the minor permit revision request.

(C) Determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards, would allow for an increase in emissions greater than the thresholds in subsection (i), or would not provide for compliance monitoring consistent with this rule and should be processed as a significant permit revision.

(4) The permit shall be revised by incorporating the minor permit revision into the permit. The commissioner shall make all changes necessary to assure compliance with this title and

the CAA prior to attaching the amendment to the permit. The commissioner shall notify the source upon attachment of the minor permit revision to the permit. Notwithstanding IC 13-15-5, the permit revision shall be effective immediately.

(i) Significant permit revision procedures are as follows:

(1) Significant permit revisions are those changes that are not subject to subsection (d) or (g) and include the following:

(A) Any modification that would be subject to 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1.

(B) Any modification that results in the source needing to obtain a FESOP under 326 IAC 2-8 or a Part 70 permit under 326 IAC 2-7.

(C) A modification that is subject to 326 IAC 8-1-6.

(D) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.

(E) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of the following pollutants:

(i) Particulate matter (PM) or particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM₁₀).

(ii) Sulfur dioxide (SO₂).

(iii) Nitrogen oxides (NO_x).

(iv) Volatile organic compounds (VOC).

(v) Hydrogen sulfide (H₂S).

(vi) Total reduced sulfur (TRS).

(vii) Reduced sulfur compounds.

(viii) Fluorides.

(F) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(G) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single hazardous air pollutant as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of hazardous air pollutants.

(H) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).

(I) Modifications involving a pollution control project as defined in 326 IAC 2-1.1-1 that result in an increase in the potential to emit any regulated pollutant greater than the thresholds under this section and require a significant change in the method or methods to demonstrate or monitor compliance.

(J) Modifications involving a pollution prevention project as defined in 326 IAC 2-1.1-1 that increase the potential to emit any regulated pollutant greater than the thresholds under this section.

(2) The following shall apply to significant permit revisions:

(A) Any person proposing to make a modification described in subdivision (1) shall submit an application concerning the modification and shall include the informa-

tion under subsection (c).

(B) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has revised the permit.

(C) The commissioner shall provide for public notice and comment in accordance with 326 IAC 2-1.1-6.

(D) The commissioner shall approve or deny the significant permit revision as follows:

(i) Within one hundred twenty (120) calendar days from receipt of an application for a significant permit revision, except for a significant permit revision under subdivision (1)(A).

(ii) Within two hundred seventy (270) calendar days from receipt of an application for a significant permit revision under subdivision (1)(A).

(E) The permit shall be revised by incorporating the significant permit revision into the permit. The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the significant permit revision to the permit.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 2-6.1-6; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1017; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed May 21, 2002, 10:20 a.m.: 25 IR 3062*)

SECTION 15. 326 IAC 2-6.1-7 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-6.1-7 Operating permit renewal

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 7. (a) An operating permit shall be valid for a period of time not to exceed five (5) years. However, permits may be valid for any lesser period if determined necessary for administrative reasons by the commissioner.

(b) At least ninety (90) calendar days prior to the expiration date of an operating permit, the applicant shall apply for a new operating permit from the commissioner if the applicant wishes to continue operation of the source. If a timely and sufficient application for renewal has been made, the existing permit does not expire until a final decision on the application for renewal has been made by the department.

(c) The application for the operating permit renewal shall include the following information:

(1) Certification that the source has not changed from the

initial permit issuance or that all modifications to the source have been reviewed and approved in accordance with this rule.

(2) Identification of any changes to the source that are subject to this article that have not received approval prior to construction or operation.

(Air Pollution Control Board; 326 IAC 2-6.1-7; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1020)

SECTION 16. 326 IAC 2-9-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-1 General provisions

Authority: IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-11-2; IC 13-14-8

Sec. 1. (a) The definitions provided in IC 13-11-2, 326 IAC 1-2, 326 IAC 2-7, and 326 IAC 2-8 apply throughout this rule.

(b) A source may limit its potential to emit by complying with the specific restrictions and conditions listed in this rule. A source electing to comply with this rule shall apply to the commissioner for a source specific operating agreement. A source issued a source specific operating agreement pursuant to this rule is not subject to 326 IAC 2-6.1 unless otherwise required by state, federal, or local law. A source issued a source specific operating agreement pursuant to this rule is not subject to 326 IAC 2-5.1 or 326 IAC 2-7 provided the source specific operating agreement limits the source's potential to emit below the applicability thresholds for 326 IAC 2-5.1 or 326 IAC 2-7. Until the commissioner has issued an operating agreement for a source that would otherwise be subject to 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, the source is subject to all applicable requirements of those rules. A source complying with this rule may at any time apply for a permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

(c) The owner or operator of a source seeking an operating agreement shall submit a request to the commissioner. The request shall include all information necessary for the commissioner to verify that the source meets the applicable restrictions and conditions specified in this rule, including the following:

- (1) Identifying information.
- (2) Description of the nature, location, design capacity, and typical operating schedule of the source.
- (3) Description of the nature and amount of regulated pollutants emitted in the prior twelve (12) months.
- (4) Description of how the source will comply with the applicable restrictions and conditions specified in this rule.
- (5) Certification by a responsible official that the source shall comply with all applicable conditions of this rule.

The request shall be signed by a responsible official who shall certify that the information contained therein is accurate, true, and complete. Any applicable fees specified in this rule shall be submitted with the request.

(d) If the commissioner determines that the source meets the applicable restrictions and conditions specified in any applicable section of this rule, the commissioner shall issue the operating agreement. The operating agreement shall specify the source specific restrictions and conditions applicable to the source and shall also establish specific monitoring and reporting requirements. Any source for which the commissioner has issued a source specific operating agreement shall provide annual notice to the commissioner stating that the source is in operation and certifying that its operations are in compliance with applicable sections as specified in the operating agreement. This notice shall be submitted no later than January 30 of each year.

(e) Before a source subject to this section modifies its operations in such a way that it will no longer comply with the applicable restrictions and conditions of its source specific operating agreement, it shall obtain the appropriate approval from the commissioner under 326 IAC 2-2, 326 IAC 2-3, 326 IAC 2-4.1, 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, and 326 IAC 2-8.

(f) Any records required to be kept by a source in accordance with any section of this rule shall be maintained at the site for at least five (5) years and shall be made available for inspection by the department upon request.

(g) A source may apply for up to four (4) different types of source specific operating agreements contained in this rule provided allowable emissions or potential to emit for any regulated air pollutant, as limited under the source specific operating agreements, do not exceed major source levels when aggregated. A source may combine up to four (4) applications. The one-time application fee for a combined application submittal shall be five hundred dollars (\$500).

(h) Any source subject to this rule shall report to the department, in writing, any exceedance of a requirement contained in this rule or its operating agreement within one (1) week of its occurrence. The exceedance report shall include information on the actions taken to correct the exceedance, including measures to reduce emissions, in order to comply with the established limits. If an exceedance is the result of a malfunction, then the provisions of 326 IAC 1-6 apply.

(i) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided.

(j) Noncompliance with any applicable provision of this rule or any requirement contained in a source's operating agreement may result in the revocation of the operating agreement and make a source subject to the applicable requirements of a major source. *(Air Pollution Control Board; 326 IAC 2-9-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2280; filed Apr 1, 1996, 9:00 a.m.: 19 IR 1757; filed May 7, 1997, 4:00 p.m.: 20 IR 2303; filed Nov*

25, 1998, 12:13 p.m.: 22 IR 1059; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108)

SECTION 17. 326 IAC 2-9-2.5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-2.5 Industrial or commercial surface coating operations not subject to 326 IAC 8-2; graphic arts operations not subject to 326 IAC 8-5-5

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-11-2; IC 13-15; IC 13-17

Sec. 2.5. (a) As used in this section, "solvent containing material" means any product used in surface coating or graphic arts operations that contains volatile organic compounds (VOC) or hazardous air pollutants (HAP), including, but not limited to, the following:

- (1) Coatings.
- (2) Inks.
- (3) Thinners.
- (4) Degreasing solvents.
- (5) Clean-up solvents.
- (6) Other additives.

(b) Except if it is a modification of a major source in Lake or Porter County subject to 326 IAC 2-3-3, any industrial or commercial surface coating operation not subject to the requirements of 326 IAC 8-2 or graphic arts operation not subject to the requirements of 326 IAC 8-5-5 may elect to be subject to this section by complying with the requirements of section 1 of this rule and the following conditions:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

(2) One (1) of the following:

(A) All surface coating or graphic arts operations at the source shall use two thousand (2,000) gallons or less of solvent containing material for every twelve (12) month period.

(B) The total amount of VOC and HAP delivered to all surface coating or graphic arts operations at the source shall not exceed the following:

(i) The total amount of VOC shall not exceed two (2) tons per month.

(ii) The total amount of a single HAP shall not exceed eight hundred thirty-three (833) pounds per month.

(iii) The total amount of any combination of HAP shall not exceed one (1) ton per month.

(3) For surface coating or graphic arts operations complying with subdivision (2)(A), the following records shall be kept at the source:

(A) Purchase orders or invoices of solvent containing materials.

(B) An annual summation on a calendar year basis of purchase orders or invoices for all solvent containing

materials.

(4) For surface coating or graphic arts operations complying with subdivision (2)(B), the following records shall be kept at the source:

(A) Number of gallons of each solvent containing material used.

(B) VOC and HAP content (pounds/gallon) of each solvent containing material used.

(C) Material safety data sheets (MSDS) for each solvent containing material used.

(D) Monthly summation of VOC and HAP usage.

(E) Purchase orders and invoices for each solvent containing material used.

(5) Particulate matter emissions shall be controlled by a dry particulate filter or an equivalent control device. The source shall operate the particulate control device in accordance with the manufacturer's specifications. A source shall be considered in compliance with this requirement provided that the overspray is not visibly detectable at the exhaust or accumulated on the rooftops or on the ground.

(6) The annual notice required by section 1(d) of this rule shall include an inventory listing monthly VOC and HAP totals and total VOC and HAP emissions for the previous twelve (12) months.

(Air Pollution Control Board; 326 IAC 2-9-2.5; filed May 7, 1997, 4:00 p.m.: 20 IR 2305)

SECTION 18. 326 IAC 2-9-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-3 Surface coating or graphic arts operations

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 3. Any industrial or commercial surface coating operation or graphic arts operation may elect to be subject to this section by complying with the requirements of section 1 of this rule and the following:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

(2) The total amount of VOC and HAP delivered to all surface coating or graphic arts operations at the source shall not exceed the following:

(A) Fifteen (15) pounds per day from surface coating or graphic arts operations at sources located outside of Lake and Porter Counties.

(B) Seven (7) pounds per day from surface coating or graphic arts operations at sources located in Lake and Porter Counties.

(3) For surface coating or graphic arts operations complying with subdivision (2), the following records shall be kept at the source:

(A) Number of gallons of each solvent containing material used.

(B) VOC and HAP content (pounds/gallon) of each solvent

containing material used.

(C) Material safety data sheets (MSDS) for all VOC and HAP containing material used.

(D) Monthly summation of VOC and HAP usage.

(E) Purchase orders and invoices for each solvent containing material used.

(4) Particulate matter emissions shall be controlled by a dry particulate filter or an equivalent control device. The source shall operate the particulate control device in accordance with the manufacturer's specifications. A source shall be considered in compliance with this requirement provided that the overspray is not visibly detectable at the exhaust or accumulated on the rooftops or on the ground.

(5) The annual notice required by section 1(d) of this rule shall include an inventory listing monthly VOC totals and total VOC emissions for the previous twelve (12) months.

(Air Pollution Control Board; 326 IAC 2-9-3; filed May 7, 1997, 4:00 p.m.: 20 IR 2305)

SECTION 19. 326 IAC 2-9-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-4 Woodworking operations

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 4. (a) Any woodworking operation subject to 326 IAC 6-1 or 326 IAC 6-3 may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the conditions under subsection (b), (c), (d), (e), or (f).

(b) Unless the operations meet the conditions of subsection (c), (d), (e), or (f), woodworking operations shall meet the following conditions:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

(2) The source shall not emit particulate matter with a diameter less than ten (10) microns (PM_{10}) in excess of one-thousandth (0.001) grain per actual cubic foot.

(3) The source shall discharge no visible emissions to the outside air from the woodworking operation.

(4) The source shall not at any time exhaust to the atmosphere greater than four hundred thousand (400,000) actual cubic feet per minute.

(5) The source shall maintain records on the types of air pollution control devices used at the source and the operation and maintenance manuals for those devices.

(c) Unless the operations meet the conditions of subsection (b), (d), (e), or (f), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.

(2) The baghouse does not exhaust to the atmosphere greater than one hundred twenty-five thousand (125,000) cubic feet

per minute.

(3) The baghouse does not emit particulate matter with a diameter less than ten (10) microns in excess of three-thousandths (0.003) grain per dry standard cubic feet of outlet air.

(4) Opacity from the baghouse does not exceed ten percent (10%) opacity.

(5) The baghouse is in operation at all times that the woodworking equipment is in use.

(6) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:

(A) The baghouse shall be inspected.

(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.

(7) The baghouse is inspected quarterly when vented to the atmosphere.

(8) The owner or operator keeps the following records:

(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.

(B) Quarterly inspection reports when vented to the atmosphere.

(C) Visible observation reports.

(D) Records of corrective actions.

(d) Unless the operations meet the conditions of subsection (b), (c), (e), or (f), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.

(2) The baghouse does not exhaust to the atmosphere greater than forty thousand (40,000) cubic feet per minute.

(3) The baghouse does not emit particulate matter with a diameter less than ten (10) microns in excess of one-hundredth (0.01) grain per dry standard cubic feet of outlet air.

(4) Opacity from the baghouse does not exceed ten percent (10%).

(5) The baghouse is in operation at all times that the woodworking equipment is in use.

(6) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:

(A) The baghouse shall be inspected.

(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.

(7) The baghouse is inspected quarterly when vented to the atmosphere.

(8) The owner or operator keeps the following records:

(A) Records documenting the date when the baghouse

redirected indoors or to the atmosphere.

(B) Quarterly inspection reports when vented to the atmosphere.

(C) Visible observation reports.

(D) Records of corrective actions.

(e) Unless the operations meet the conditions of subsection (b), (c), (d), or (f), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.

(2) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

(3) The baghouse shall not exhaust greater than one hundred twenty-five thousand (125,000) cubic feet per minute to the atmosphere.

(4) The baghouse shall not emit particulate matter with a diameter less than ten (10) microns (PM_{10}) greater than one-hundredth (0.01) grain per dry standard cubic feet of outlet air.

(5) Opacity from the baghouse does not exceed ten percent (10%).

(6) The baghouse is in operation at all times that the woodworking equipment is in use.

(7) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:

(A) The baghouse shall be inspected.

(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.

(8) The baghouse is inspected quarterly when vented to the atmosphere.

(9) The owner or operator keeps the following records:

(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.

(B) Quarterly inspection reports when vented to the atmosphere.

(C) Visible observation reports.

(D) Records of corrective actions.

(f) Unless the operations meet the conditions of subsection (b), (c), (d), or (e), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.

(2) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

(3) The baghouse shall not exhaust greater than sixty-five thousand (65,000) cubic feet per minute to the atmosphere.

(4) The baghouse shall not emit particulate matter with a

diameter less than ten (10) microns (PM_{10}) greater than one-hundredth (0.01) grain per dry standard cubic feet of outlet air.

(5) Opacity from the baghouse does not exceed ten percent (10%).

(6) The baghouse is in operation at all times that the woodworking equipment is in use.

(7) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:

(A) The baghouse shall be inspected.

(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.

(8) The baghouse is inspected quarterly when vented to the atmosphere.

(9) The owner or operator keeps the following records:

(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.

(B) Quarterly inspection reports when vented to the atmosphere.

(C) Visible observation reports.

(D) Records of corrective actions.

(g) The requirement to submit the five hundred dollar (\$500) application fee shall not apply to a source that has been issued an operating agreement under this section.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 2-9-4; filed May 7, 1997, 4:00 p.m.: 20 IR 2306; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1060; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108; filed May 21, 2002, 10:20 a.m.: 25 IR 3075*)

SECTION 20. 326 IAC 2-9-5 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-5 Abrasive cleaning operations

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 5. Any industrial or commercial source of abrasive cleaning operations may elect to be subject to this section by complying with the requirements of section 1 of this rule and the following:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

(2) All abrasive cleaning operations shall be totally enclosed.

(3) Emissions of particulate matter shall not exceed one-hundredth (0.01) grain per actual cubic foot per minute.

(4) Air flow shall not exceed forty thousand (40,000) actual cubic feet per minute.

(5) The source shall maintain records on the types of air pollution control devices used at the source and the operation and maintenance manuals for those devices.

(Air Pollution Control Board; 326 IAC 2-9-5; filed May 7, 1997, 4:00 p.m.: 20 IR 2306)

SECTION 21. 326 IAC 2-9-6 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-6 Grain elevators

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 6. Any grain elevator subject to 326 IAC 2-6.1, 326 IAC 2-7, and 326 IAC 2-8 may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

(2) Grain elevators with storage capacity less than or equal to one million (1,000,000) U.S. bushels that contain receiving, shipping, or grain storage facilities; headhouse, gallery belt, or tripper belt operations; or grain cleaning or grain drying equipment shall comply with the following:

(A) Grain elevators shall not receive or ship more than three million (3,000,000) U.S. bushels of grain annually.

(B) Each source shall maintain records of the type and amount of grain received and shipped on an annual basis.

(3) Grain elevators with storage capacity greater than one million (1,000,000) U.S. bushels of grain but no more than two million five hundred thousand (2,500,000) U.S. bushels that contain receiving, shipping, or grain storage facilities; headhouse, gallery belt, or tripper belt operations; or grain cleaning or grain drying equipment shall comply with the following provisions:

(A) Grain elevators shall not receive or ship more than ten million (10,000,000) U.S. bushels of grain annually.

(B) Each source shall limit particulate matter emissions through the application of mineral oil or soybean oil to all grain after it is received at an application rate of three-hundredths percent (0.03%) by weight or greater.

(C) Each source shall maintain the following records on a monthly basis:

(i) Type and amount of grain received and shipped.

(ii) Amount of mineral oil or soybean oil used and the rate of application.

(iii) Purchase orders and invoices for mineral oil or soybean oil.

(Air Pollution Control Board; 326 IAC 2-9-6; filed May 7, 1997, 4:00 p.m.: 20 IR 2306; filed Nov 25, 1998, 12:13 p.m.:

22 IR 1062)

SECTION 22. 326 IAC 2-9-7, PROPOSED TO BE AMENDED AT 26 IR 2009, SECTION 13, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-7 Sand and gravel plants

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 7. (a) The following definitions apply throughout this section:

(1) "Annual throughput" means the amount of material that is being processed through the plant on a calendar year basis.

(2) "Sand and gravel" means any unconsolidated mixture of fine or coarse aggregate, or both, found in and processed from a natural deposit.

(3) "Surfactant" means any chemical additive that reduces the surface tension of water.

(4) "Wet process in a pit and quarry operation" means the operation in which the aggregate deposit being processed has:

(A) been mined from beneath bodies of water, such as rivers, estuaries, lakes, or oceans; or

(B) a free moisture content of one and five-tenths percent (1.5%) by weight or greater.

The aggregate infeed that undergoes such process shall maintain a minimum of one and five-tenths percent (1.5%) by weight throughout the production process.

(5) "Wet suppression systems" means dust control devices in a pit and quarry operation that use a pressurized liquid, either water or water with a small amount of surfactant, for the controlled reduction or elimination of airborne dust or the suppression of such dust at its source.

(b) Any sand and gravel plant may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions, outlined under subdivisions (1) through (4), as applicable, and subdivision (5):

(1) Sand and gravel plants that do not emit particulate matter in excess of or equal to twenty-five (25) tons per year, including fugitive particulate emissions, utilizing at most five (5) crushers, ten (10) screens, and a conveying operation shall limit the annual throughput to less than four hundred ten thousand (410,000) tons per year.

(2) Sand and gravel plants that do not emit particulate matter in excess of or equal to twenty-five (25) tons per year, excluding fugitive particulate emissions utilizing at most nine (9) crushers, twenty (20) screens, and a conveying operation shall limit the annual throughput to less than one million (1,000,000) tons per year.

(3) Sand and gravel plants that do not emit particulate matter in excess of or equal to one hundred (100) tons per year, excluding fugitive particulate emissions, utilizing at most twelve (12) crushers, twenty-four (24) screens, and a conveying operation shall limit the annual throughput to less than three million one hundred thousand (3,100,000) tons per year.

(4) Sand and gravel plants that meet the specific restrictions and conditions in subdivision (1), (2), or (3) shall also comply with the following provisions:

(A) Each source described by subdivisions (1) through (2) shall maintain annual throughput records at the site on a calendar year basis.

(B) Each source described by subdivision (3) shall maintain at the site throughput records for the previous twelve (12) months on a monthly rolling total.

(C) A wet process or continuous wet suppressions shall be used.

(D) All manufacturing equipment that generates particulate emissions and control devices shall be operated and maintained at all times of plant operation in such a manner as to meet the requirements of this rule.

(E) Visible emissions from the screening and conveying operations shall not exceed an average of ten percent (10%) opacity in twenty-four (24) consecutive readings in a six (6) minute period, and visible emissions from the crushing operation shall not exceed an average of fifteen percent (15%) opacity in twenty-four (24) consecutive readings in a six (6) minute period. Compliance with these limitations shall be determined by 40 CFR 60, Appendix A, Method 9*.

(F) Fugitive particulate emissions shall be controlled by applying water on storage piles and unpaved roadways on an as needed basis, such that the following visible emission conditions are met:

(i) Visible emissions from storage piles shall not exceed twenty percent (20%) in twenty-four (24) consecutive readings in a six (6) minute period. This limitation shall not apply during periods when application of control measures are ineffective or unreasonable due to sustained high wind speeds. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9*, except that the opacity shall be observed at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth ($\frac{1}{4}$) mile, from the plume and at approximately right angles to the plume.

(ii) Visible emissions from unpaved roadways shall not exceed an average instantaneous opacity of twenty percent (20%). Average instantaneous opacity shall be the average of twelve (12) instantaneous opacity readings, taken for four (4) vehicle passes, consisting of three (3) opacity readings for each vehicle pass. The three (3) opacity readings for each vehicle pass shall be taken as follows:

(AA) The first shall be taken at the time of emission generation.

(BB) The second shall be taken five (5) seconds after the first.

(CC) The third shall be taken five (5) seconds after the second or ten (10) seconds after the first.

The three (3) readings shall be taken at approximately

four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth ($\frac{1}{4}$) mile, from the plume and at approximately right angles to the plume.

(G) Fugitive particulate emissions at a sand and gravel plant shall not escape beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located pursuant to 326 IAC 6-4.

(H) The source shall comply with 40 CFR 60.670, Standards of Performance for Nonmetallic Mineral Processing Plants*, if applicable.

(5) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 2-9-7; filed May 7, 1997, 4:00 p.m.: 20 IR 2307; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566*)

SECTION 23. 326 IAC 2-9-8, PROPOSED TO BE AMENDED AT 26 IR 2010, SECTION 14, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-8 Crushed stone processing plants

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 8. (a) The following definitions apply throughout this section:

(1) "Annual throughput" means the amount of material that is being processed through the plant in a calendar year.

(2) "Crushed stone" means any composition of limestone, granite, traprock, or any other hard, sound rock that is produced by blasting and then crushing.

(3) "Wet process in a pit and quarry operation" means the operation in which the aggregate deposit being processed has:

(A) been mined from beneath bodies of water, such as rivers, estuaries, lakes, or oceans; or

(B) a free moisture content of one and five-tenths percent (1.5%) by weight or greater.

The aggregate infeed that undergoes such process shall maintain a minimum of one and five-tenths percent (1.5%) by weight throughout the production process.

(4) "Wet suppression systems" means dust control devices in a pit and quarry operation that use a pressurized liquid, either water or water with a small amount of surfactant, for the controlled reduction or elimination of airborne dust or the suppression of such dust at its source.

(b) Any crushed stone processing plant may elect to be

subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions, outlined under subdivisions (1) through (4), as applicable, and subdivision (5):

(1) Crushed stone processing plants that do not emit particulate matter in excess of or equal to twenty-five (25) tons per year, including fugitive particulate emissions, utilizing at most four (4) crushers, seven (7) screens, and a conveying operation shall limit the annual throughput to less than four hundred thousand (400,000) tons per year.

(2) Crushed stone processing plants that do not emit particulate matter in excess of or equal to twenty-five (25) tons, excluding fugitive particulate emissions, utilizing at most six (6) crushers, thirteen (13) screens, and a conveying operation shall limit the annual throughput to less than one million (1,000,000) tons per year.

(3) Crushed stone processing plants that do not emit particulate matter in excess of or equal to one hundred (100) tons per year, excluding fugitive particulate emissions, utilizing at most nine (9) crushers, seventeen (17) screens, and a conveying operation shall comply with the following provisions:

(A) The annual throughput shall not exceed three million (3,000,000) tons per year.

(B) Each source under this subdivision shall pay an annual fee of eight hundred dollars (\$800).

(4) Crushed stone processing plants that meet the specific restrictions and conditions in subdivision (1), (2), or (3) shall also comply with the following provisions:

(A) Each source described by subdivisions (1) through (2) shall maintain annual throughput records at the site on a calendar year basis.

(B) Each source described by subdivision (3) shall maintain at the site throughput records for the previous twelve (12) months on a monthly rolling total.

(C) The crushing, screening, and conveying operations shall be equipped with dust collectors, unless a wet process or continuous wet suppression system is used, to comply with clause (E).

(D) All manufacturing equipment that generates particulate emissions and control devices shall be operated and maintained at all times of plant operation in such a manner as to meet the requirements of this rule.

(E) Visible emissions from the screening and conveying operations shall not exceed an average of ten percent (10%) opacity in twenty-four (24) consecutive readings in a six (6) minute period, and visible emissions from the crushing operation shall not exceed an average of fifteen percent (15%) opacity in twenty-four (24) consecutive readings in a six (6) minute period. Compliance with these limitations shall be determined by 40 CFR 60, Appendix A, Method 9*.

(F) Fugitive particulate emissions shall be controlled by applying water on storage piles and unpaved roadways on an as needed basis such that the following visible emission conditions are met:

(i) Visible emissions from storage piles shall not exceed

twenty percent (20%) in twenty-four (24) consecutive readings in a six (6) minute period. This limitation shall not apply during periods when application of control measures are ineffective or unreasonable due to sustained high wind speeds. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9*, except that the opacity shall be observed at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (1/4) mile, from the plume and at approximately right angles to the plume.

(ii) Visible emissions from unpaved roadways shall not exceed an average instantaneous opacity of twenty percent (20%). Average instantaneous opacity shall be the average of twelve (12) instantaneous opacity readings, taken for four (4) vehicle passes, consisting of three (3) opacity readings for each vehicle pass. The three (3) opacity readings for each vehicle pass shall be taken as follows:

(AA) The first shall be taken at the time of emission generation.

(BB) The second shall be taken five (5) seconds after the first.

(CC) The third shall be taken five (5) seconds after the second or ten (10) seconds after the first.

The three (3) readings shall be taken at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (1/4) mile, from the plume and at approximately right angles to the plume.

(G) Fugitive particulate emissions at a crushed stone plant shall not escape beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located, pursuant to 326 IAC 6-4.

(H) The source shall comply with 40 CFR 60.670, Standards of Performance for Nonmetallic Mineral Processing Plants*, if applicable.

(5) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 2-9-8; filed May 7, 1997, 4:00 p.m.: 20 IR 2308; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566*)

SECTION 24. 326 IAC 2-9-9, PROPOSED TO BE AMENDED AT 26 IR 2012, SECTION 15, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-9 Ready-mix concrete batch plants**Authority:** IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11**Affected:** IC 13-15; IC 13-17

Sec. 9. (a) The following definitions apply throughout this section:

- (1) "Aggregate" means any combination of sand, gravel, and crushed stone in their natural or processed state.
- (2) "Aggregate transfer" means the transfer of material:
 - (A) from process equipment onto the ground;
 - (B) from the ground into hauling equipment;
 - (C) from hauling equipment onto a storage pile;
 - (D) from a storage pile into hauling equipment for transport; or
 - (E) into an initial hopper for further process.
- (3) "Cement" means a powdered substance manufactured from calcined carbonate rock (burned lime) and clay that, when mixed with water, forms a cohesive and adhesive material that will harden into a rigid mass.
- (4) "Concrete" means a construction material consisting of a coarse and fine aggregate bound by a paste of cement and water, which then sets into a hard and compact substance.
- (5) "Ready-mix concrete batch plant" means a facility that prepares and distributes made-to-order batches of concrete in bulk or package form.

(b) Any ready-mix concrete batch plant with actual annual emissions of particulate matter (PM) less than twenty-five (25) tons per year, including fugitive particulate emissions, may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the following conditions:

- (1) Production shall be limited to three hundred thousand (300,000) cubic yards annually.
- (2) Each source shall maintain records of annual production at the site on a calendar year basis.
- (3) Fugitive particulate emissions from cement and aggregate silos shall be controlled by operating dust collectors, such that visible emissions do not exceed twenty percent (20%) opacity in twenty-four (24) consecutive readings in a six (6) minute period. Compliance with this limitation shall be determined by 40 CFR 60, Appendix A, Method 9*.
- (4) Fugitive particulate emissions shall be controlled by applying water on aggregate storage piles, unpaved roadways, and aggregate transfer operations on an as needed basis such that the following visible emission conditions are met:
 - (A) Visible emissions from storage piles shall not exceed twenty percent (20%) in twenty-four (24) consecutive readings in a six (6) minute period. This limitation shall not apply during periods when application of control measures are ineffective or unreasonable due to sustained high wind speeds. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9*, except that the opacity shall be observed at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (1/4)

mile, from the plume and at approximately right angles to the plume.

(B) Visible emissions from unpaved roads shall not exceed an average instantaneous opacity of twenty percent (20%). Average instantaneous opacity shall be the average of twelve (12) instantaneous opacity readings, taken for four (4) vehicle passes, consisting of three (3) opacity readings for each vehicle pass. The three (3) opacity readings for each vehicle pass shall be taken as follows:

- (i) The first shall be taken at the time of emission generation.
- (ii) The second shall be taken five (5) seconds after the first.
- (iii) The third shall be taken five (5) seconds after the second or ten (10) seconds after the first.

The three (3) readings shall be taken at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (1/4) mile, from the plume and at approximately right angles to the plume.

(C) Visible emissions from aggregate transferring operations shall not exceed an average instantaneous opacity of twenty percent (20%). The average instantaneous opacity shall be the average of three (3) opacity readings taken five (5) seconds, ten (10) seconds, and fifteen (15) seconds after the end of one (1) material loading or unloading operation. The three (3) readings shall be taken at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but no more than one-fourth (1/4) mile, from the plume and at approximately right angles to the plume.

- (5) All manufacturing equipment that generates particulate emissions and control devices shall be operated and maintained in such a manner as to meet the requirements of this rule.
- (6) Cement transferring operations shall always be enclosed.
- (7) Each source shall maintain records on the types of air pollution control devices used at the source and the operation and maintenance manuals for those devices.
- (8) Fugitive particulate emissions at a ready-mix concrete batch plant shall not escape beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located, pursuant to 326 IAC 6-4.
- (9) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars (\$500).

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 2-9-9; filed May 7, 1997, 4:00 p.m.: 20 IR 2309; errata filed*

Dec 12, 2002, 3:35 p.m.: 26 IR 1566)

SECTION 25. 326 IAC 2-9-10, PROPOSED TO BE AMENDED AT 26 IR 2013, SECTION 16, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-10 Coal mines and coal preparation plants

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 10. (a) The following definitions apply throughout this section:

- (1) "Coal" means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM Designation D388-88*.
- (2) "Coal mine" means an individual excavation site from which coal is removed by surface or underground mining operations.
- (3) "Coal preparation plant" means any facility (excluding underground and surface mining operations) that prepares coal by one (1) or more of the following processes:
 - (A) Breaking.
 - (B) Crushing.
 - (C) Screening.
 - (D) Wet or dry cleaning.
 - (E) Thermal drying.
- (4) "Coal processing and conveying equipment" means any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey coal to or remove coal and refuse from the machinery. This includes, but is not limited to, the following:
 - (A) Breakers.
 - (B) Crushers.
 - (C) Screens.
 - (D) Conveyor belts.
- (5) "Collocated source" means any coal preparation facility and coal mine that are:
 - (A) located on one (1) piece of property or on contiguous or adjacent properties; and
 - (B) which are owned or operated by the same person (or by persons under common control).
- (6) "Material transfer" means the transfer of material:
 - (A) from process equipment onto the ground;
 - (B) from the ground into hauling equipment;
 - (C) from hauling equipment onto a storage pile;
 - (D) from a storage pile into hauling equipment for transport; or
 - (E) into an initial hopper for further processing.
- (7) "Refuse" means the portion of mined coal which is rejected by the preparation plant as unsalable.
- (8) "Thermal dryer" means any facility in which the moisture content of bituminous coal is reduced by contact with a heated gas stream that is exhausted to the air.

(b) Any coal preparation plant, coal mine, or collocated source may elect to be subject to this section by complying with

the requirements of section 1 of this rule and meeting the following conditions:

- (1) Coal preparation plants that do not utilize thermal dryers or pneumatic coal cleaning equipment and do not emit particulate matter less than ten microns (PM₁₀) in excess of or equal to one hundred (100) tons per year, including fugitive particulate emissions, shall limit the total annual tons of coal shipped to less than five million (5,000,000) tons per year and must comply with the following:
 - (A) Each coal preparation plant shall maintain at the site total annual throughput records for the previous twelve (12) months on a monthly rolling total, and records shall be kept for a minimum of five (5) years.
 - (B) The screening, crushing, and conveying operations at a coal preparation plant shall be enclosed, unless a wet suppression system is used, such that visible emissions shall not exceed an average of twenty percent (20%) opacity in twenty-four (24) consecutive readings in a six (6) minute period using procedures in 40 CFR 60, Appendix A, Method 9**.

- (2) Fugitive particulate emissions at a coal preparation plant, coal mine, or collocated source from open storage piles, unpaved roadways, or batch transfer operations shall be controlled by applying water or other approved dust suppressant on an as needed basis such that the following visible emission conditions are met:
 - (A) Visible emissions from storage piles shall not exceed twenty percent (20%) in twenty-four (24) consecutive readings in a six (6) minute period. This limitation shall not apply during periods when application of control measures are ineffective or unreasonable due to sustained high wind speeds. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9**, except that the opacity shall be observed at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.
 - (B) Visible emissions from unpaved roads shall not exceed an average instantaneous opacity of twenty percent (20%). The average instantaneous opacity shall be the average of twelve (12) instantaneous opacity readings, taken for four (4) vehicle passes, consisting of three (3) opacity readings for each vehicle pass. The three (3) opacity readings for each vehicle pass shall be taken as follows:
 - (i) The first will be taken at the time of emission generation.
 - (ii) The second will be taken five (5) seconds after the first.
 - (iii) The third will be taken five (5) seconds after the second or ten (10) seconds after the first.

The three (3) readings shall be taken at approximately four (4) feet from the surface at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.

(C) Visible emissions from material transfer operations shall not exceed an average instantaneous opacity of twenty percent (20%). The average instantaneous opacity shall be the average of three (3) opacity readings taken five (5) seconds, ten (10) seconds, and fifteen (15) seconds after the end of one (1) material loading or unloading operation. The three (3) readings shall be taken at the point of maximum opacity. The observer shall stand at least fifteen (15) feet, but not more than one-fourth (¼) mile, from the plume and at approximately right angles to the plume.

(3) All visible emission readings shall be performed by a qualified observer as defined in 326 IAC 1-2-62.

(4) Fugitive particulate emissions at a coal preparation plant, coal mine, or collocated source shall not escape beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located, pursuant to 326 IAC 6-4.

(5) The annual notice required by section 1(d) of this rule shall also include the legal description of the source's location.

(6) Each coal preparation plant, coal mine, or collocated source shall pay a one-time application fee of five hundred dollars (\$500) and an annual fee of six hundred dollars (\$600).

*This document is incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

**This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 2-9-10; filed May 7, 1997, 4:00 p.m.: 20 IR 2310; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566*)

SECTION 26. 326 IAC 2-9-11 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-11 Automobile refinishing operations

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 11. (a) The following definitions apply throughout this section:

(1) "Automobile refinishing" is defined at 326 IAC 8-10-2(5).

(2) "Solvent containing material" means any product used in automobile refinishing operations that contains volatile organic compounds (VOC) or hazardous air pollutants (HAP), including, but not limited to, the following:

(A) Pretreatment wash primers.

(B) Precoats.

(C) Primers.

(D) Primer surfacers.

(E) Primer sealers.

(F) Topcoats.

(G) Specialty coatings.

(H) Surface preparation products.

(I) Gun cleaning solutions.

(J) Paint removers.

(K) Degreasing solvents.

(L) Hardeners.

(M) Catalysts.

(N) Reducers.

(O) Other additives.

(b) An owner or operator of an automobile refinishing shop may elect to comply with this section by complying with the requirements of section 1 of this rule and the following conditions:

(1) The requirements of 326 IAC 8-10, if applicable.

(2) One (1) of the following:

(A) The total amount of all solvent containing material delivered to the automobile refinishing shop, less the amount of solvent containing material quantified by manifest as having been shipped off-site, shall not exceed two thousand (2,000) gallons annually.

(B) The total amount of all solvent containing material delivered to the automobile refinishing shop that meets the VOC limits of 326 IAC 8-10-4(b), less the amount of solvent containing material quantified by manifest as having been shipped off-site, shall not exceed three thousand (3,000) gallons annually.

(C) The total amount of VOC delivered to the automobile refinishing shop, less the amount of VOC that is quantified by manifest as having been shipped off-site, shall not exceed one (1) ton per month.

(3) For automobile refinishing shops electing to comply with subdivision (2)(A) or (2)(B), usage shall be determined based on either:

(A) actual use records; or

(B) purchase records.

(4) Particulate matter emissions shall be controlled by a dry particulate filter or an equivalent control device. The source shall operate the particulate control device in accordance with the manufacturer's specifications. A source shall be considered in compliance with this requirement provided that the overspray is not visibly detectable at the exhaust or accumulated on the rooftops or on the ground.

(5) Request a source specific operating agreement under this section of the rule, which shall be accompanied by a fee of five hundred dollars (\$500).

(c) An owner or operator of an automobile refinishing shop that has been issued an operating agreement under this section

shall keep the following records at the source:

- (1) For automobile refinishing shops complying with subsection (b)(2)(A), the following records shall be kept:
 - (A) Purchase or use records of solvent containing materials.
 - (B) An annual summation on a calendar year basis of purchase or use records for all solvent containing materials.
 - (C) Amount of waste solvent containing material manifested off-site.
 - (2) For automobile refinishing shops complying with subsection (b)(2)(B), the records required under subdivision (1) and the records required under 326 IAC 8-10-9(a) shall be kept.
 - (3) For automobile refinishing shops complying with subsection (b)(2)(C), the following records shall be kept:
 - (A) Purchase orders and invoices for each solvent containing material.
 - (B) Number of gallons of each solvent containing material used.
 - (C) VOC content (pounds/gallon) of each solvent containing material used.
 - (D) Amount of waste VOC manifested off-site.
 - (E) Summation on a monthly basis of emissions of VOC.
- (Air Pollution Control Board; 326 IAC 2-9-11; filed May 7, 1997, 4:00 p.m.: 20 IR 2312)*

SECTION 27. 326 IAC 2-9-12 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-12 Degreasing operations

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 12. (a) An owner or operator of a degreasing operation may elect to comply with this section by complying with the requirements of section 1 of this rule and the following conditions:

- (1) Request a source specific operating agreement under this section of the rule, which shall be accompanied by a fee of five hundred dollars (\$500).
- (2) The requirements of 326 IAC 8-3 and 326 IAC 20-6, if applicable.
- (3) The total amount of VOC and HAP delivered to degreasing operations at the source, less the amount of VOC and HAP that is quantified by manifest as having been shipped off-site, on an annual rolling average basis as follows:
 - (A) The total amount of any single HAP from degreasing operations shall not exceed eight hundred thirty-three (833) pounds per month.
 - (B) The total amount of any combination of HAP from degreasing operations shall not exceed one (1) ton per month.
 - (C) The total amount of VOC from degreasing operations at sources located in Lake and Porter Counties shall not exceed one (1) ton per month.
 - (D) The total amount of VOC from degreasing operations at sources located outside of Lake and Porter Counties shall not exceed two (2) tons per month.

(b) An owner or operator of a degreasing operation that has been issued an operating agreement under this section shall keep the following records at the source:

- (1) Purchase records for all degreasing solvents.
- (2) Material safety data sheets (MSDS) for all degreasing solvents.
- (3) Amount of waste degreasing solvent manifested off-site.
- (4) Monthly summation of VOC and HAP emissions for all degreasing solvents.

(Air Pollution Control Board; 326 IAC 2-9-12; filed May 7, 1997, 4:00 p.m.: 20 IR 2313)

SECTION 28. 326 IAC 2-9-13, PROPOSED TO BE AMENDED AT 26 IR 2014, SECTION 17, IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-13 External combustion sources

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 13. (a) The following definitions apply throughout this section:

- (1) “Boiler” means a device that uses the heat generated from combustion of a fuel or electrical resistance to raise the temperature of water above the boiling point for water at the operating pressure.
- (2) “Dryer” means a device that uses the heat generated from combustion of a fuel or electrical resistance to drive off volatile compounds by evaporation from materials processed in such a device.
- (3) “Oven” means a device that uses the heat generated from combustion of a fuel or electrical resistance to cause or expedite a chemical curing process or drive off volatile compounds from material processed in such a device.
- (4) “Process heater” means a device that uses the heat generated from combustion of a fuel or electrical resistance to heat a material so as to augment or expedite its processing.
- (5) “Space heater” means a device that uses the heat generated from combustion of a fuel or electrical resistance to heat the air inside a building or otherwise provide comfort heating.
- (6) “Water heater” means a device that uses the heat generated from combustion of a fuel or electrical resistance to raise the temperature of water below the boiling point for water at the operating pressure.

(b) Any external combustion source, including any combination of boilers, space heaters, ovens, dryers, or water heaters may elect to comply with this section by complying with the requirements of section 1 of this rule and the following conditions:

- (1) Visible emissions from the source shall not exceed twenty percent (20%) opacity in twenty-four (24) consecutive readings in a six (6) minute period. The opacity shall be determined using 40 CFR 60, Appendix A, Method 9*.
- (2) One (1) of the following:
 - (A) Limiting fuel usage for every twelve (12) month period

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to less than the limits found in subsection (f), Table 1 for a single fuel or a combination of two (2) fuels.

(B) Limiting fuel usage for every twelve (12) month period to less than the limits found in subsection (g), Table 2 for a single fuel or a combination of two (2) fuels.

(c) Sources electing to comply with subsection (b)(2)(A) must be able to demonstrate compliance no later than thirty (30) days after receipt of a written request by the department or U.S. EPA. No other demonstration of compliance shall be required. A source specific operating agreement is not required for these sources.

(d) Sources electing to comply with subsection (b)(2)(B) must comply with the requirements of section 1 of this rule and submit a request for a source specific operating agreement accompanied by a one-time application fee of five hundred dollars (\$500).

(e) For sources complying with subsection (b)(2)(B), the following records shall be kept at the source:

- (1) Hours operated for each combustion unit.
- (2) Records of annual fuel usage for each combustion unit.
- (3) Routine maintenance records.

(f) Table 1 limits shall be as follows:

TABLE 1

Fuel	Maximum Fuel Usage per year
Single Fuel	
Natural gas	1,000.0 MMCF
Maximum capacity: 0.3 to <10 MMBtu/hr	
Natural gas	714.0 MMCF
Maximum capacity: 10 to 100 MMBtu/hr	
Natural gas	181.0 MMCF
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,408.0 kgals
Fuel oil #5 and #6 (distillate)	181.0 kgals
Liquified petroleum gas (LPG)	5,263.0 MMCF
Coal (bituminous and subbituminous)	786.0 tons
Bark-only	5,882.0 tons
Wood-only	7,352.0 tons
Wood and bark	7,352.0 tons
Dual Fuel ¹	
Natural gas	976.0 MMCF
Fuel oil #1 and #2 (distillate)	117.0 kgals
Maximum capacity: 0.3 to <10 MMBtu/hr	
Natural gas	697.0 MMCF
Fuel oil #1 and #2 (distillate)	117.0 kgals
Maximum capacity: 10 to 100 MMBtu/hr	
Natural gas	177.0 MMCF
Fuel oil #1 and #2 (distillate)	117.0 kgals
Maximum capacity: >100 MMBtu/hr	

Fuel oil #1 and #2 (distillate)	1,407.0 kgals
Natural gas	83.0 MMCF
Maximum capacity: 0.3 to <10 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,407.0 kgals
Natural gas	59.0 MMCF
Maximum capacity: 10 to 100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,407.0 kgals
Natural gas	15.0 MMCF
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	1,291.0 kgals
Fuel oil #5 and #6 (residual)	15.0 kgals
Coal (bituminous and subbituminous)	786.0 tons
Bark, wood, or wood and bark	490.0 tons
Bark, wood, or wood and bark	5,858.0 tons
Coal (bituminous and subbituminous)	65.0 tons
(¹ Top fuel is intended to be the primary fuel, the bottom fuel is the secondary fuel.)	
Unit abbreviations:	
kgals = 10 ³ gallons	
MMCF = 10 ⁶ cubic feet	

(g) Table 2 limits shall be as follows:

TABLE 2

Fuel	Maximum Fuel Usage per year
Single Fuel	
Natural gas	1,600.0 MMCF
Maximum capacity: 0.3 to <10 MMBtu/hr	
Natural gas	1,142.0 MMCF
Maximum capacity: 10 to 100 MMBtu/hr	
Natural gas	290.0 MMCF
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate)	2,253.0 kgals
Fuel oil #5 and #6 (residual)	291.0 kgals
Liquified petroleum gas (LPG)	8,421.0 MMCF
Coal (bituminous and subbituminous)	1,258.0 tons
Bark-only	9,411.0 tons
Wood-only	11,764.0 tons
Wood/bark	11,764.0 tons
Dual Fuel ¹	
Natural gas	1,562.0 MMCF
Fuel oil #1 and #2 (distillate)	187.0 kgals
Maximum capacity: 0.3 to <10 MMBtu/hr	
Natural gas	1,115.0 MMCF
Fuel oil #1 and #2 (distillate)	187.0 kgals
Maximum capacity: 10 to 100 MMBtu/hr	
Natural gas	284.0 MMCF
Fuel oil #1 and #2 (distillate)	187.0 kgals
Maximum capacity: >100 MMBtu/hr	
Fuel oil #1 and #2 (distillate fuel)	2,252.0 kgals
Natural gas	133.0 MMCF

Maximum capacity: 0.3 to <10

MMBtu/hr

Fuel oil #1 and #2 (distillate fuel)	2,252.0 kgals
Natural gas	95.0 MMCF

Maximum capacity: 10 to 100 MMBtu/hr

Fuel oil #1 and #2 (distillate fuel)	2,252.0 kgals
Natural gas	24.0 MMCF

Maximum capacity: >100 MMBtu/hr

Fuel oil #1 and #2 (distillate fuel)	2,065.0 kgals
Fuel oil #5 and #6 (residual)	24.0 kgals
Coal (bituminous and subbituminous)	1,258.0 tons
Bark, wood, or wood and bark	784.0 tons
Bark, wood, or wood and bark	9,373.0 tons
Coal (bituminous and subbituminous)	104.0 tons

(*Top fuel is intended to be the primary fuel; the bottom fuel is the secondary fuel.)

Unit abbreviations:

kgals = 10³ gallons

MMCF = 10⁶ cubic feet

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 2-9-13; filed May 7, 1997, 4:00 p.m.: 20 IR 2313; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566*)

SECTION 29. 326 IAC 2-9-14 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-9-14 Internal combustion sources

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 14. (a) Any stationary internal combustion source, including any combination of turbines, reciprocating engines, or engines, may elect to comply with this section by complying with section 1 of this rule and one (1) of the following:

(1) Limiting fuel usage for every twelve (12) month period to less than the limits found in subsection (e), Table 1 for a single fuel or a combination of two (2) fuels.

(2) Limiting fuel usage for every twelve (12) month period to less than the limits found in subsection (f), Table 2 for a single fuel or a combination of two (2) fuels.

(b) Sources electing to comply with subsection (a)(1) must be able to demonstrate compliance no later than thirty (30) days after receipt of a written request by the department or U.S. EPA. No other demonstration of compliance shall be required. A source specific operating agreement is not required for these sources.

(c) Sources electing to comply with subsection (a)(2) must

comply with the requirements of section 1 of this rule and submit a request for a source specific operating agreement accompanied by a one-time application fee of five hundred dollars (\$500).

(d) For sources complying with subsection (a)(2), the following records shall be kept at the source:

- (1) Hours operated for each combustion unit.
- (2) Records of annual fuel usage for each combustion unit.
- (3) Routine maintenance records.

(e) Table 1 limits shall be as follows:

TABLE 1

Fuel	Maximum Fuel Usage per Year
Large turbine	
Natural gas	227.27 MMCF/yr
Distillate	1,414.42 kgal/yr
Uncontrolled natural gas prime movers	
Gas turbines	294.11 MMCF/yr
2-cycle lean burn	37.03 MMCF/yr
4-cycle lean burn	31.25 MMCF/yr
4-cycle rich burn	43.47 MMCF/yr
Diesel, reciprocating	
<600 HP	165.51 kgal/yr
Gasoline, reciprocating	
<250 HP	12.26 kgal/yr
Diesel, large stationary	235.45 kgal/yr
Unit abbreviations:	
kgal = 10 ³ gallons	
MMCF = 10 ⁶ cubic feet	

(f) Table 2 limits shall be as follows:

TABLE 2

Fuel	Maximum Fuel Usage per Year
Large turbine	
Natural gas	363.63 MMCF/yr
Distillate	2,263.07 kgal/yr
Uncontrolled natural gas prime movers	
Gas turbines	470.58 MMCF/yr
2-cycle lean burn	59.25 MMCF/yr
4-cycle lean burn	50.00 MMCF/yr
4-cycle rich burn	69.56 MMCF/yr
Diesel, reciprocating	
<600 HP	264.82 kgal/yr
Gasoline, reciprocating	
<250 HP	19.62 kgal/yr
Diesel, large stationary	376.72 kgal/yr
Unit abbreviations:	
kgal = 10 ³ gallons	
MMCF = 10 ⁶ cubic feet	

(*Air Pollution Control Board; 326 IAC 2-9-14; filed May 7, 1997, 4:00 p.m.: 20 IR 2315*)

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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 September 1, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed readoption of 326 IAC 2-5.1-1, 326 IAC 2-5.1-2, 326 IAC 2-5.5, 326 IAC 2-6.1, and 326 IAC 2-9.

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 readoption. 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, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855, (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

hydrochloric acid production; printing, coating, and dyeing of fabrics and other textiles; surface coating of metal furniture; and surface coating of wood building products. Effective 30 days after filing with the secretary of state.

HISTORY

IC 13-14-9-8 Notice and Notice of First Hearing: May 1, 2004, Indiana Register (27 IR 2587).

Date of First Hearing: June 2, 2004.

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 draft rule published on May 1, 2004, at 27 IR 2587, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 2, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rules 326 IAC 20-71, 326 IAC 20-72, 326 IAC 20-73, 326 IAC 20-74, 326 IAC 20-75, 326 IAC 20-76, 326 IAC 20-77, 326 IAC 20-78, 326 IAC 20-79. No comments were made at the first hearing.

326 IAC 20-71	326 IAC 20-76
326 IAC 20-72	326 IAC 20-77
326 IAC 20-73	326 IAC 20-78
326 IAC 20-74	326 IAC 20-79
326 IAC 20-75	

SECTION 1. 326 IAC 20-71 IS ADDED TO READ AS FOLLOWS:

Rule 71. Asphalt Processing and Asphalt Roofing

326 IAC 20-71-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8681* (68 FR 24578, May 7, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart LLLLL* (67 FR 24578, May 7, 2003, National Emission Standards for Hazardous Air Pollutants for Asphalt Roofing And Processing).

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule

LSA Document #04-107

DIGEST

Adds 326 IAC 20-71 through 326 IAC 20-79 to incorporate by reference the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asphalt processing and asphalt roofing manufacturing; brick and structural clay products manufacturing; clay ceramics manufacturing; coke ovens; pushing, quenching, and battery stacks; engine test cells/stands;

Control Board; 326 IAC 20-71-1)

SECTION 2. 326 IAC 20-72 IS ADDED TO READ AS FOLLOWS:

Rule 72. Brick and Structural Clay Products

326 IAC 20-72-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8385 (68 FR 26722, May 16, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart JJJJJ (68 FR 26722, May 16, 2003, National Emission Standards for Brick and Structural Clay Products)*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-72-1*)

SECTION 3. 326 IAC 20-73 IS ADDED TO READ AS FOLLOWS:

Rule 73. Clay Ceramics Manufacturing

326 IAC 20-73-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8535*(68 FR 26738, May 16, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart KKKKK*(68 FR 26738, May 16, 2003, National Emission Standards for Clay Ceramics Manufacturing)*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-73-1*)

SECTION 4. 326 IAC 20-74 IS ADDED TO READ AS

FOLLOWS:

Rule 74. Coke Ovens: Pushing, Quenching, and Battery Stacks

326 IAC 20-74-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7281 (68 FR 18026, April 14, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart CCCCC*(68 FR 18025, April 14, 2003, National Emission Standards for Coke Ovens: Pushing, Quenching, and Battery Stacks)*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-74-1*)

SECTION 5. 326 IAC 20-75 IS ADDED TO READ AS FOLLOWS:

Rule 75. Engine Test Cells/Standards

326 IAC 20-75-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.9285*(68 FR 28785, May 27, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart PTTTT (68 FR 28785, May 27, 2003, National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Standards)*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-75-1*)

SECTION 6. 326 IAC 20-76 IS ADDED TO READ AS FOLLOWS:

Proposed Rules

Rule 76. Hydrochloric Acid Production

326 IAC 20-76-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8985* (68 FR 19090, April 17, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart NNNN* (68 FR 19090, April 17, 2003, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production).

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-76-1*)

SECTION 7. 326 IAC 20-77 IS ADDED TO READ AS FOLLOWS:

Rule 77. Printing, Coating, and Dyeing of Fabrics and Other Textiles

326 IAC 20-77-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.4281* (68 FR 32188, May 29, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart OOOO* (68 FR 32188, May 29, 2003, National Emission Standards for Hazardous Air Pollutants for Printing, Coating, and Dyeing of Fabrics and Other Textiles).

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-77-1*)

SECTION 8. 326 IAC 20-78 IS ADDED TO READ AS FOLLOWS:

Rule 78. Surface Coating of Metal Furniture

326 IAC 20-78-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.4881* (68 FR 28620, May 23, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart RRRR* (68 FR 28620, May 23, 2003, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Furniture).

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-78-1*)

SECTION 9. 326 IAC 20-79 IS ADDED TO READ AS FOLLOWS:

Rule 79. Surface Coating of Wood Building Products

326 IAC 20-79-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7181* (68 FR 31760, May 28, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart QQQQ* (68 FR 31760, May 28, 2003, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products).

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-79-1*)

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 September 1, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the

Air Pollution Control Board will hold a public hearing on proposed new rules 326 IAC 20-71, 326 IAC 20-72, 326 IAC 20-73, 326 IAC 20-74, 326 IAC 20-75, 326 IAC 20-76, 326 IAC 20-77, 326 IAC 20-78, and 326 IAC 20-79.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. 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 Gayl Killough, Rule Development Section, Office of Air Quality, (317)233-8628 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015*

or call (317) 233-0855, (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule LSA Document #01-161

DIGEST

Amends 329 IAC 9 concerning underground storage tanks to clarify language and requirements, to add new definitions, to repeal some definitions and renumber to alphabetize additional definitions, to add appropriate changes to make the rule consistent with IC 13-12-3-2 and 328 IAC 1, the excess liability trust fund rules, to reorganize and clarify Rule 6, the closure of UST systems, to delete "modified closure" and the accompanying requirements, to relocate several sections to be consistent with the federal regulations and appropriate procedures, and to update incorporation by reference documents. *NOTE: Under IC*

4-22-2-40, LSA Document #01-161, printed at 26 IR 1201, was recalled by the Solid Waste Management Board and resubmitted for publication. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: June 1, 2001, Indiana Register (24 IR 2917).

Second Notice of Comment Period: June 1, 2002, Indiana Register (25 IR 2900).

Notice of First Hearing: June 1, 2002, Indiana Register (25 IR 2926).

Date of First Hearing: October 15, 2003.

Notice of Second Hearing and Third Comment Period: January 1, 2003, Indiana Register (26 IR 1201).

Change in Notice of Public Hearing: August 1, 2003 (26 IR 3671), hearing continued to October 21, 2003.

Date of Second Hearing: October 21, 2003.

Notice of Recall: May 1, 2004, Indiana Register (27 IR 2500).

Notice of First Hearing: April 1, 2004, Indiana Register (27 IR 2299).

Date of First Hearing: April 20, 2004.

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 draft rule published on June 1, 2002, at 25 IR 2900, 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

The Indiana Department of Environmental Management (IDEM) requested public comment from June 1, 2002, through July 1, 2002, on IDEM's draft rule language. IDEM received comments from the following parties:

Vincent L. Griffin, Indiana Chamber (ICC)

C. Michael Pitts, Indiana Petroleum Marketers and Convenience Store Association (IPCA)

Patrick M. Gorman, Indiana Steel Environmental Group (ISEG)

Catherine Gibbs, Lee & Ryan (L & R)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: We appreciate the agency's intentions behind the proposal. These intentions may be largely wasted, however, because the proposal does not respond to the main practical issues facing the UST section. Portions of the proposal are also likely to cause confusion regarding the meaning of the agency's non-binding "RISC" policy. (ICC)(ISEG)

Response: The agency's intention was to clarify parts of the rule that have been a problem for both the regulated community in understanding and compliance and a problem for the agency in implementation, protectiveness or consistency with the federal rules.

Comment: The first step in revising IDEM's UST regulations needs to be a clear definition of the practical problem. Thanks to design improvements over the past decades, the great majority of underground storage tanks do not leak and are not an environmental problem. Where leaks have occurred, mostly in older units containing gasoline and other petroleum products, extensive nationwide experience shows that

the environmental problems are typically limited and that the sites will clean themselves over time through natural attenuation of chemical constituents. For example, the National Research Council recently reported that “natural processes have been used alone, without engineered steps to enhance them, at more than 15,000 sites where fuels from underground storage tanks have leaked into groundwater.” NRC, *Natural Attenuation for Groundwater Remediation*, p. 1 (National Academy Press 2000) (emphasis added). IDEM estimates on its web site that Indiana currently contains “about 4,000” underground storage tanks that have leaked. Of these, the agency describes 10% as “high priority” sites, which includes sites where “drinking water may be impacted.” The key objective is to separate the relative handful of high priority sites from the great majority of sites that are routine or that have no leaks at all. This separation is also important to the environment because it allows environmental professionals to focus their time and resources where they are needed. This separation is important to the economy of Indiana. It allows the great majority of UST sites to be returned quickly to productive use. This separation is also important to state government. The state is facing a major budget crisis and has already asked its employees to cut back on hours on a voluntary basis. IDEM simply cannot provide maximum scrutiny to every UST site without sacrificing its ability to do its job in other areas. The practical problem is that IDEM’s UST regulations have done a poor job of making this separation. (ICC)(ISEG)

Response: IDEM agrees that the state and federal regulations requiring upgrades to UST systems has greatly reduced the number of releases of petroleum products. IDEM also agrees that natural attenuation is a viable option for obtaining closure for a cleanup. IDEM recently published a draft non-rule policy document titled “Monitored Natural Attenuation for Petroleum Contaminated Sites.” The draft document can be found on the LUST web site at <http://www.IN.gov/idem/land/lust/index.html>. It will be finalized in the near future. However, not all sites are candidates for using MNA alone. U.S. Environmental Protection Agency, Office of Underground Storage Tanks reported on March 31, 2002, that about 423,000 release reports have been documented nationally. Of those, about 277,000 have been cleaned up. Based on the number you quoted from the NRC report of 15,000 sites, only 5% of the UST releases used monitored natural attenuation (MNA) for ground water. The comment seems to imply that only “high priority” sites should require cleanup and that all other sites should simply use natural attenuation. IDEM does have a simple prioritization scheme to ensure that the worst sites receive attention first. To say that low and medium priority sites do not require cleanup, it incorrect. The comment did not say whether source removal was used at the sites in the NRC report. In most circumstances, source removal is needed. As always, early detection and quick response often keeps low and medium priority sites from becoming high priority. However, the Risk Integrated System of Closure (February 2001) and Ground Water Quality Standards (327 IAC 2-11) are the appropriate policy and law, respectively, for evaluating risk and whether corrective action is needed, not the UST rule. IDEM does allocate resources to address high, medium and low priority sites. Just because the state is in a budget crisis, it is not a reason to abandon IDEM law and policy at the expense of public health and the environment. The Leaking Underground Storage Tank (LUST) program is funded by EPA grant money and dedicated funds generated by UST fees, penalties and cost recovery. No “general fund” dollars are spent to administer the IDEM LUST program. As for putting properties back into use, IDEM dedicates significant resources to facilitate reuse. However, IDEM has no control over whether a lending institution chooses to grant a loan and does not approve or deny property transfer and redevelopment. IDEM believes that the LUST program is effective at keeping LUST

sites in compliance and facilitating closure. IDEM continues to streamline LUST processes and maximize state resources.

Comment: Two regulatory provisions are primarily responsible for this lack of separation. First, the regulations require a “site investigation and corrective action” if any individual soil sample shows total petroleum hydrocarbons (TPH) of more than 100 ppm. when a UST is being closed. 329 IAC 9-6-2(c)(1). Second, this “site investigation and corrective action” is also required if any groundwater sample shows a chemical constituent present in any detectable concentration. 329 IAC 9-6-2(a)(3) Each of these regulatory provisions is also reflected in the current version of the agency’s non-binding RISC guidelines. The RISC User’s Guide identifies 100 ppm TPH as, not just a trigger for further investigation, but as the “default” cleanup standard for soil (page 3-6). Similarly, the User’s Guide states that a wide-ranging “nature and extent determination is required” for any constituents reported in groundwater at minimum laboratory quantitation limits. (page 3-4). What this means in practice is that essentially all UST closures are forced into a costly, detailed study of soil and groundwater - a level of study that is appropriate for the handful of high priority sites with leaking tanks but that is overkill to apply on a routine basis. (ICC)(ISEG)

Response: The UST rule is being revised to make it consistent with the RISC policy (effective February 16, 2001). The current draft rule repeals 329 IAC 6-2 and is replaced with 329 IAC 6-2.5. Both 329 IAC 9-4 (Releases) and 5 (Corrective Action) are being revised as well to make them consistent with RISC. All references to TPH testing were deleted in the rule. In addition, RISC does not specifically require TPH analyses under most circumstances. IDEM is currently assessing risk associated with ATPHA as a revision to RISC. This revision to RISC is expected to be finalized in 2003.

To suggest that only “high priority” sites should require investigation and corrective action and that addressing lower priority sites is “overkill” is invalid. Decisions about corrective action are only as good as the information IDEM has. In many cases, low priority sites are found to be medium or high priority once site characterization activities are conducted. In addition, IDEM’s prioritization scheme for LUST sites is designed for resource allocation and not to say that “low and medium priority” sites have no risk. In conclusion, the UST rule is written with respect to “site investigation and corrective action” to provide flexibility:

1.329 IAC 9-5-5.1 requires the submission of an Initial Site Characterization while 329 IAC 9-5-5.1(c) allows for alternative procedures. Under many circumstances, a complete ISC is not required and only minor information is requested.

2.329 IAC 9-5-6(a) says that a Further Site Investigation may be required in order to determine the full extent of soil and ground water contamination. The information gathered is used to determine whether corrective action is necessary.

3.329 IAC 9-5-7(a) says that the commissioner may require submission additional information or a Corrective Action Plan. 329 IAC 9-5-7(f)(2) and (3) state that the soil and ground water objectives must be risk-based as mandated by IC 13-12-3-2.

Comment: IDEM has acknowledged in public meetings that the 100 TPH standard for soil is preventing closure from occurring at many sites and that a higher threshold, “in the thousands of ppm,” would still be protective. Similarly, costly and time consuming groundwater investigations are currently being required based on initial sample results that show water quality better than tap water, better than natural background, and better than the state’s groundwater quality standards. IDEM’s current proposal does not acknowledge or respond to this practical problem. This omission essentially ensures that UST closures will continue to be needlessly slow and costly, and that future rounds

of rulemaking will be necessary. (ICC)(ISEG)

Response: IDEM acknowledges that the cleanup objective in the 1994 UST Branch Guidance Manual for on-site site contamination is 100 ppm TPH. Several years ago, IDEM initiated the process of developing a “risk-based” approach for closure in response to the ASTM “Risk-based Corrective Action (RBCA)” guidance, encouragement from U.S. EPA and support from the regulated community. The end result of this process was RISC. The published RISC Transition policy allows owners and operators using old guidance to transition to RISC. The RISC policy is designed to quantify and qualify risk to human health and the environment that is less restrictive than the 1994 Guidance. Currently, the LUST program approves many sites for LUST closure using 1994 Guidance when the soil and/or ground water corrective action guidelines are exceeded based on IDEM’s experience with petroleum releases and how they behave, and site specific conditions. As stated earlier, the need for corrective action or not cannot be assessed without knowing the extent of the problem, i.e. decisions are only as good as the information provided to IDEM. To make decisions regarding corrective action and closure without adequate information would be contrary to government and industry policies and standards including, but not limited to Superfund Risk Assessments Guidelines (RAGs), RISC, ATSM RBCA, and Indiana Code (IC 13-12-3-2). IDEM disagrees that UST closures are needlessly slow and costly. As always, rules change as needs change. IDEM concurs that future revisions of the UST rule will be necessary, but probably not for the reasons you state.

Comment: We strongly encourage the agency to respond to this practical problem by incorporating the following language in the rule for evaluating initial soil and groundwater data:

329 IAC 9-6-2.5 Closure Procedure

(a)(2) Closure sampling, laboratory analysis with the associated detection limits for the UST system closure are required as follows...

(D) Sampling to further characterize the site is required if TPH concentrations in any single soil sample are above 4,000 ppm. Sampling to further characterize the site is required if constituent concentrations in any single groundwater sample exceed applicable groundwater quality standards. The Commissioner may also require further sampling based on site-specific information that soil or groundwater pose an environmental risk.

This type of language will separate the potential priority sites, which require further investigation, from the large number of sites where a simple and routine closure process is appropriate. The last sentence of the suggested language above would provide IDEM with flexibility to identify sites for further study based on site-specific factors.

To apply this kind of flexible rule language, IDEM could and should use its experience and its written statements of policy or guidance. (ICC)(ISEG)

Response: IDEM strongly disagrees with the suggestion to incorporate the recommended language into 329 IAC 9-6-2.5. There is no scientific basis for the concentration of 4,000 ppm TPH. Indiana Code 13-12-3-2 prohibits this approach as it is not risk-based. It also does not address the issue of releases discovered in ways other than UST closure such as environmental data collected as a result of a suspected release or prior to property transfer as a Phase 2 Environmental Assessment. As stated in previous comments, to equate the LUST prioritization scheme with risk is incorrect and decisions about corrective action and closure cannot be assessed without knowing the nature and extent of contamination. Admittedly, data gathered during a UST closure or Phase 2 environmental assessment may be adequate to make this assessment, but not always. Finally, a change to 4,000 ppm TPH would also be inconsistent with government and industry

standards and policies.

Comment: But the agency’s current proposal takes a very different approach. In about half a dozen locations, the proposal would “require” facilities to “comply” with a recent guidance document, the “Risk Integrated System of Closure” or “RISC.” (Example: “The sampling must meet... the exposure criteria established under RISC”). These references to the RISC policy are likely to cause serious confusion. It’s unclear what it means to “require” compliance with a policy statement that was not written as a force of law regulation. (ICC)(ISEG)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule.

Comment: For example, the RISC policy explains that it provides only a “default” approach that may be used at essentially any site, but that any particular facility may follow “nondefault” approaches instead. According to the policy, “the nondefault process is not, by definition, superior or inferior to the default process. Nondefault procedures may be more applicable or advantageous for use at a particular site, and closure may be granted for nondefault approaches, when appropriate.” (RISC Technical Support Document, p. 1-4). In its current proposal, does IDEM intend that facilities must comply only with the “default” approach under RISC? If so, this is a requirement that the RISC policy itself rejects. If not, then what does it mean to require compliance with a policy that says, on its face, that other approaches may be more applicable or advantageous for use at particular sites, and may be used at such sites? (ICC)(ISEG)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule. It was never IDEM’s intention to require anyone to follow a default approach and as stated in the comment the RISC Guidance provides flexibility to allow non-default approaches.

Comment: More generally, RISC consists of several hundred pages of text and appendices divided between two volumes. It is not appropriate to incorporate this enormous amount of text in the state regulations. (ICC)(ISEG)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule.

Comment: IDEM issued its RISC policy one year ago, and its practical value remains unclear. IDEM has not provided any objective statistics about the performance of the program to date. The UST program apparently has completed few if any closures under RISC, in part due to the 100-ppm requirement for TPH. At least one IDEM program reports that it has not performed any “default” investigations under RISC. At this point, RISC does not have a proven track record that would warrant its incorporation in the state’s regulations. (ICC)(ISEG)

Response: IDEM is preparing a report to provide information on the number of RISC reviews that have been completed since January of this year. It is important to remember that the transition period for RISC did not end until February of this year and it is not unusual for an UST review to take a significant amount of time to work through the complete process. Given these time frames it is not surprising that very few sites have been closed under the RISC guidance. In order to respond to the specific concern of referencing RISC in the rule all references to RISC have been deleted.

Comment: Finally, IDEM often refers to RISC as a “living document” that will undergo continual improvement based on experience. By contrast, the document would become frozen in place upon incorporation in the Indiana regulations, which requires reference to a specific version of the document on a fixed date. (ICC)(ISEG)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule.

Comment: IDEM’s first notice of proposed rulemaking, at 24 Ind.

Reg. 2917 (June 1, 2001), stated that the rule under development would “clarify language in the existing rule without adding new requirements.” (Emphasis added). In fact, the agency’s proposal includes several apparently new regulatory requirements. These include:

329 IAC 9-3-1(c)(12)-(15)

new record keeping requirements for manufacturer’s information; for results of sampling, testing, and monitoring; and for documentation of calibration, maintenance, and repairs.

329 IAC 9-3.1-2(3)(B)

new testing requirements for cathodic protection systems

329 IAC 9-3.1-4(b)(2)

new prohibition on continued use of a tank after maintenance has been performed on 30% of the original lined surface

329 IAC 9.3.1-4(b)(6)

new testing requirements following maintenance of corrosion protection systems

No reason is provided by the agency for these changes. Consistent with the first notice, these new requirements should be withdrawn. (ICC)(ISEG)

Response: 329 IAC 9-3-1(c)(12)-(15) This is not a new requirement; it was moved from 329 IAC 9-7-6. It made sense to put this record keeping requirement in the Reporting and Recordkeeping section. 329 IAC 9-7-6 was repealed.

329 IAC 9-3.1-2(3)(B) The federal regulations at 40 CFR 280.31(b)(1) requires that all cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the department. The state rules needed to clarify that requirement because it was not clear that the testing was for all types of tanks requiring cathodic protection. This is not an additional requirement because an owner/operator would have had to test under the federal requirements.

329 IAC 9-3.1-4(b)(2) The state rule clearly states that a tank can’t be lined. This means that any tank that needed relining would have to be replaced instead. This new provision, however, allows for up to 30% relining before the tank must be replaced.

329 IAC 9.3.1-4(b)(6) The department agrees and did not intend to make the testing requirement for maintenance. The words “and maintenance” will be deleted in this subdivision only.

Comment: IDEM proposes to allow electronic reporting for UST closures but states that any “documents submitted in an electronic format must also be submitted as a paper copy.” 329 IAC 9-3-2 (proposed). The requirement for a separate paper copy defeats the purpose of electronic reporting. The costs of this duplication are shared by the facility, which must generate the paper copies, and by IDEM, which must receive, process, and store the paper versions. Electronic documents in Acrobat PDF format provide exact electronic duplicates of paper copies. These documents are widely used and relied upon in commerce. Numerous IDEM programs rely on data that is submitted in electronic form only. IDEM’s UST program should do the same. 329 IAC 9-3-2 Electronic Reporting and Submittal - page 2909; The IPCA appreciates that this rule would allow submission of electronic reports. However, to require that said reports also be submitted as a paper copy defeats the purpose of electronic filing and does not reduce the time and paperwork burdens these rules impose at all. The paper copy provision can and should be deleted. If IDEM is concerned about receipt of electronic submittals, a process can be built-in to verify the agency has received the information. (ICC)(ISEG)(IPCA)

Response: The Federal Government is encouraging states to set up systems and rules that allow for electronic reporting and electronic records. 40 CFR 3 is a new, proposed rule by the Environmental Protection Agency that sets the standards for electronic reporting.

Because the state rules are opened for changes infrequently, the department determined that this rulemaking was the best vehicle for adding what will be a common place requirement in the future and start facilities thinking about doing business electronically. Remember, it is an option for facilities to submit electronically; the department is laying the groundwork for electronic submissions and reporting. As electronic reporting becomes more common, paper copies will not be needed. However, the department is also gearing up and the paper copies, which are a necessity now, can probably be phased out in the future.

Comment: 329 IAC 9-1-1 (f) Applicability - page 2901; In this section, and elsewhere in these proposed rules, the Risk Integrated System of Closure (RISC) standards are fully incorporated as the only standards for remediating UST releases. RISC is still evolving at this point and our industry has numerous concerns about its applicability and appropriateness for the typical gasoline station clean-up. This rule would forever lock in RISC, which exists merely as a non-rule policy and is subject to change by IDEM at any time. Thus, we are being asked to make a great leap of faith in this regard. The IPCA requests that this section be amended to reflect a commitment from IDEM that any changes to RISC affecting petroleum UST remediations will be thoroughly discussed with industry stakeholders prior to implementation. (IPCA)

Response: IDEM concurs and all references to RISC have been deleted from the proposed rule. IDEM has provided multiple opportunities for input into the RISC Guidance and such opportunities continue to exist. Any group that would like to meet with staff to discuss the RISC Guidance and the need for revisions or clarifications is encouraged to do so at anytime.

Comment: 329 IAC 9-3-1(c)(12)(13)(14)(15) Reporting and Recordkeeping - page 2909; These new sections would add extensive new recordkeeping requirements to an already burdensome rule. The IPCA finds these additions to be extremely vague, yet amazingly expansive in their scope. There are several references to “all” and “any” documents of various types, which must be kept for the “longest time period” possible. We seriously question the necessity for, and the benefits gained to be gained, from such onerous recordkeeping requirements and whether anything will truly be accomplished by them. The UST owner already has numerous financial and other reasons to insure that his leak detection systems are operating properly. Let’s not distract him with additional new and burdensome paperwork requirements. (IPCA)

Response: This is not a new requirement; it was moved from 329 IAC 9-7-6. It made sense to put this recording keeping requirement in the Reporting and Recordkeeping section. 329 IAC 9-7-6 was repealed.

Comment: Section 329 IAC 9-3-1 (d) Reporting and Recordkeeping - Page 2909; IDEM is proposing changes to this section regarding availability of records. The IPCA does not oppose the changes being made but, they do not address a more important issue faced by UST owners. Despite many protests from this Association and others, IDEM staff have persisted in showing up unannounced for routine UST inspections at gasoline/convenience store operations where there may only be one or two clerks on duty. Records are better kept at company offices and or this reason the IPCA was instrumental in amending, this rule several years ago to add item (2). However, that has not kept IDEM from being overbearing in their demands for instantaneous production of documents when they’ve shown up unannounced. For this reason, the IPCA proposes the following changes to this section, as follows:

(d) The owner and operator shall maintain the records required: (1) at the underground storage tank site and ~~immediately~~ available for inspection by the agency **upon at least three (3) business days advance notice**; or (2) at a readily available alternative site and be provided **within three (3) business days** for inspection to the agency

upon request. (IPCA)

Response: The Indiana Statute at IC 13-14-2-2 allows a designated agent, upon presentation of proper credentials, enter upon private or public property to inspect for and investigate possible violations of any of the following: (3) Environmental management laws.....(8) any rule adopted by one (1) of the boards. This statute does not require prior notification of an impending inspection. According to 329 IAC 9-3-1(d)(2) the owner and operator shall maintain the records required at a readily available alternative site and be provided for inspection to the agency upon request. The records are necessary to perform adequate inspections. The records can be kept at an alternative site, however to do a proper inspection, the records need to be available as soon possible upon request by the inspector. Compliance with this requirement can save the state money because the inspector is not sitting around waiting for records to arrive, but can inspect a facility as it normally does business. Further, Indiana's rule language must be at least as stringent as the federal regulation.

Comment: 329 IAC 9-3.1-2(b) Operation and Maintenance of Corrosion Protection - page 2910; Corrosion protection systems are normally tested shortly after installation. Our reading of new section (b) is that testing upon installation is "within" six (6) months. If the intent of this new language is to require a new test at the six (6) month interval, then IPCA would oppose this requirement as unnecessary in light of existing section (a) which requires inspection every sixty (60) days to ensure operation. (IPCA)

Response: Your reading is correct.

Comment: 329 IAC 9-3.1-4 Repairs and Maintenance Allowed - page 2910; The word "maintenance" is added numerous times throughout this entire section, yet it is not defined. Maintenance is a vague term which could be interpreted to include many very minor and routine functions which, per section (7), must then be documented. The vagueness involved creates a compliance nightmare which is coupled with onerous new paperwork requirements. The IPCA, again, does not see the benefits to be gained from this addition of extensive new regulatory requirements. (IPCA)

Response: "Maintenance" is defined in the Underground Storage Tank rules at 329 IAC 9-1-29. The addition of "maintenance" to 329 IAC 9-3.1-4 does not add additional requirements but an allowance for maintenance to be accomplished. This is a benefit. In 329 IAC 9.3.1-4(b)(6), the department agrees and did not intend to make the testing requirement on maintenance. The words "and maintenance" will be deleted in this subdivision only.

Comment: 329 IAC 9-5-5.1 (b) Initial Site Characterization - page 2914; RISC is much more complex than existing UST clean-up standards and requires more time for lab results, etc. The IPCA requests that this section be amended to allow for submission of initial site characterizations in sixty (60) days rather than the forty-five (45) days presently allowed. (IPCA)

Response: It is a requirement in the federal regulations that the initial site characterization (ISC) at 40 CFR 280.63(b) must be submitted within 45 days of release confirmation or another reasonable period of time determined by the implementing agency. The implementing agency believes that 45 days is an adequate time for the owner and operator to submit the ISC. To help expedite the submittal, IDEM has adjusted the requirements for the ISC to what will provide the necessary information without holding up the submittal. The department is confident that information can be obtained for the ISC, written and submitted within 45 days. Further site information and more in-depth testing can be done later.

Comment: 329 IAC 9-5-5.1(b)(2)(E)(viii)(EE) ISC - Soil Borings - page 2915; The IPCA objects to the addition of this new requirement regarding horizontal accuracy for soil boring locations. Presently, tape

measure reading are adequate. To achieve the kind of accuracy contemplated by this proposed change would necessitate the involvement of a surveyor at LUST sites which are generally small parcels of land. The IPCA strongly recommends keeping this rule as is. (IPCA)

Response: The department is not asking for the accuracy that the commentor seems to envision. This measurement is done as the soil borings are done. The rule does not require that a certified surveyor make the measurement.

Comment: 329 IAC 9-5-7(a)(f) Corrective Action Plan - page 2916/2917; The IPCA strongly objects to the proposed deletion of the language regarding deemed approved corrective action plans. This is provided for by statute and should remain in the rules. Additionally, we encourage IDEM to allow at least ninety (90) days for submission of Corrective Action Plans rather, than the current sixty (60) days, due to the complexities involved with RISC. (IPCA)

Response: The language that allows for Corrective Action Plans to be approved is found under the excess liability trust fund allowances. This statute directs IDEM on what can be reimbursed for corrective action taken on underground storage tanks. This does not set the standards for corrective action plans for underground storage tanks. Regarding the current sixty (60) days, this is a policy and cannot be found in the rule. The rule says in 329 IAC 9-5-7(a) that, "If a (corrective action) plan is required, the owner and operator shall submit the plan according to a schedule established by the commissioner....." The corrective action plans are submitted according to a schedule established by the commissioner, which in the past has, as a policy, been sixty (60) days. However if an owner and operator can show that additional time is needed the commissioner can grant ninety (90) days for the CAP submittal without changing the rule. The current rule language leaves flexibility for the owner and operator to ask for longer times as necessary.

Comment: 329 IAC 9-6-2.5(a)(5)(7) Closure Procedure - page 2919; RISC is more extensive and requires additional tests, etc. Therefore, the IPCA requests that this section be amended to allow forty-five (45) days for the submission of closure reports and for the submission of additional information which may subsequently be required. (IPCA)

Response: Because this is not a federal requirement and because the department is not sure the extent RISC will increase the time needed to complete a closure report, IDEM agrees with the commentor and will amend the thirty (30) days required to submit a closure report. New language will allow for the closure report to be submitted within forty-five (45) days.

Comment: 329 IAC 9-6-2.5 (3) Water Samples - page 2921 The IPCA is opposed to the addition of item (3) requiring soil borings to continue to "a depth where a ground water sample can be obtained." In some areas of Indiana, this could require borings as deep as 60 to 70 feet down. When you bore that far down, contamination found could come from anywhere. The IPCA believes that the requirements of section (2) are reasonable but, section (3) should be deleted. (IPCA)

Response: The department will clarify the rule. 329 IAC 9-6-2.5(e)(3), (f)(5), and (g)(3) will be changed to read, "If groundwater is not encountered within a depth of thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum of thirty (30) feet."

Comment: 329 IAC 9-1-14.3 "Contaminant" defined: Lee & Ryan believes that this definition is too broad and suggests that the definition of "contaminant" reference the definition of "regulated substance" contained in IC 13-11-1-183. (L&R)

Response: The Indiana Code at 13-23-1-2(5) says that the rules adopted by the solid waste management board must have requirements for underground storage tanks to prevent future releases of regulated substances into the environment. However, (3) requires the reporting of **any** release. The use or reference to "regulated substance" only differs by

excluding regulated hazardous waste. The exclusion for “regulated hazardous waste” was added to the definition of “contaminant.”

Comment: 329 IAC 9-1-41.3 “RISC” defined: Lee & Ryan suggests that this definition include a reference to the number assigned to the RISC non-rule policy document. (L&R)

Response: All references to RISC have been deleted in the proposed rule.

Comment: 329 IAC 9-5-7 Corrective Action Plan: Lee & Ryan is specifically concerned about the requirement in (f)(1)(B)(ii). Will this information be necessary if the owner or operator chooses to use the default option under RISC? (L&R)

Response: All references to RISC have been deleted in the proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST PUBLIC HEARING

On April 20, 2004, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to rules at 329 IAC 9.

Comments were made by the following parties:

Kent Shadley, Alliance Environmental (ALE)

Following is a summary of the comments received and IDEM’s responses thereto:

Comment: I would like to take this opportunity to thank the Board, Mr. Palin, Ms. West, the Underground Storage Tank Section, and the Leaking Underground Storage Tank Section for the diligent work on the rule. There are a lot of specific things that are listed in this rule. This makes it a lot easier for me to tell my client, “There are certain things we have to do. It’s required by rule.” I like specificity in the regulations, because I can go down a checklist and make sure I have everything to the agency right the first time. (ALE)

Response: The agency agrees that specificity has a place in some regulations.

Comment: However, there are a couple of things in this rule that disturb me. One of those is related to laboratory procedures, and this would relate to Item 3 on Mr. Palin’s memo, 329 IAC 9-5-5.1(b)(2)(F)(v). Documentation, in a format prescribed by the Commissioner, of the sampling and analysis conducted,” and then we have a deletion. I understand the agency’s desire, the Board’s desire, to allow flexibility for the use of certain laboratory methods, but in the initial comments that were made, I believe the agency’s response to one of the comments was that people are free to use whatever analysis method they want. As an environmental consultant, this is difficult for me because I do not know if I am to use an EPA method, an American Waterworks Association method, or some other method. I can tell you from experience that different laboratories will utilize different methods, different clients will request different methods, and I think this puts a burden on the regulated community, on people attempting to help them comply with these regulations, and the agency. I would ask the Board to consider specificity in this rule as to what analytical parameters—if we do not want to specifically mention methods, fine, but I would ask that you specify the controlling document. SW-846 not only contains all of the methods that hazardous waste and the RCRA people use, but also has chapters on quality control and sample handling procedures. You have been very specific in the things that are listed in this rule as far as boring logs, the types of professional that can sign the report, the information you ask for, and you are to be commended on that. And yet, when we come to this requirement, we have a listing of SW-846. That has been deleted. That is not specifically emphasized in the risk guidance document, and I have a couple of clients who will say, “Oh, the Indiana Code says risk for voluntary cleanup, that’s a nonrule policy document, that is not enforceable by law. Therefore, I want you to run this particular method because I

know I’m not going to get a result of a contaminant that I will get under there [sic.] other methods.”

Response: The Indiana statute at IC 13-12-3-2 requires that remediation and closure objectives and standards for activities conducted under IC 13-22 and IC 13-23 be consistent with the remediation objectives in IC 13-25-5-8.5 and the groundwater quality standards. The work plan required by IC 13-25-5-8.5 must specify an assessment of the risks posed by the hazardous substance or petroleum presently on the site taking into consideration expected use of the site and measurable risks to human health, natural resources and the environment. The department, in an effort to make measuring risks to human health, natural resources and the environment more convenient, understandable and appropriate developed the Risk Integrated System of Closure (RISC). RISC provides assurance that the regulated community required to undertake a remediation has the information and tools available to complete the work and that this work will be acceptable to the department and the public. In Appendix 2 of the RISC Technical Guide, the appropriate sampling method, holding times, laboratory analysis method and the quality control/quality assurance for the chemical of concern is described. Other methods may or may not satisfy the statutory requirement to adequately assess the risks involved. So, while the specific references to SW-846 have been removed, the reference to the statute leads to the requirement for a risk assessment with the department providing guidance to assure those assessments are properly and expeditiously done. The RISC guidance does contain the specificity requested by the commenter. This assurance and this flexibility were requested by other stakeholders and the department concurred with their viewpoint.

329 IAC 9-1-1	329 IAC 9-3-2
329 IAC 9-1-4	329 IAC 9-3.1-1
329 IAC 9-1-10.1	329 IAC 9-3.1-2
329 IAC 9-1-10.2	329 IAC 9-3.1-3
329 IAC 9-1-10.4	329 IAC 9-3.1-4
329 IAC 9-1-10.6	329 IAC 9-4-3
329 IAC 9-1-10.8	329 IAC 9-4-4
329 IAC 9-1-14	329 IAC 9-5-1
329 IAC 9-1-14.1	329 IAC 9-5-2
329 IAC 9-1-14.3	329 IAC 9-5-3.1
329 IAC 9-1-14.5	329 IAC 9-5-3.2
329 IAC 9-1-14.7	329 IAC 9-5-4.1
329 IAC 9-1-25	329 IAC 9-5-4.2
329 IAC 9-1-27	329 IAC 9-5-5.1
329 IAC 9-1-29.1	329 IAC 9-5-6
329 IAC 9-1-36	329 IAC 9-5-7
329 IAC 9-1-36.5	329 IAC 9-6-1
329 IAC 9-1-39.5	329 IAC 9-6-2
329 IAC 9-1-41	329 IAC 9-6-2.5
329 IAC 9-1-41.1	329 IAC 9-6-3
329 IAC 9-1-41.5	329 IAC 9-6-4
329 IAC 9-1-42.1	329 IAC 9-6-5
329 IAC 9-1-47	329 IAC 9-7-1
329 IAC 9-1-47.1	329 IAC 9-7-2
329 IAC 9-2-1	329 IAC 9-7-4
329 IAC 9-2-2	329 IAC 9-7-5
329 IAC 9-2.1-1	329 IAC 9-7-6
329 IAC 9-3-1	

SECTION 1. 329 IAC 9-1-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-12-3-2; IC 13-23

Sec. 1. (a) ~~The requirements of~~ This article ~~apply~~ **applies** to all owners and operators of ~~a~~ **an** UST system as defined in section 49 of this rule, except as otherwise provided in subsections (b) ~~(c); and~~ **through** (d). Any UST system listed in subsection (c) shall meet the requirements of section 1.1 of this rule. Nothing in this article shall be construed to conflict with, circumvent, rescind, or repeal any authority, power, or duty possessed by the office of the state fire marshal under Indiana law.

(b) The following UST systems are excluded from the requirements of this article:

- (1) Any UST system holding:
 - (A) hazardous wastes regulated under Subtitle C (42 U.S.C. 6921 through 42 U.S.C. 6939b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996; or
 - (B) a mixture of such hazardous waste and other regulated substances.
- (2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 (33 U.S.C. 1342) or 307(b) (33 U.S.C. 1317(b)) of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., in effect on October 31, 1994.
- (3) Equipment or machinery that contains regulated substances for operational purposes and that may include any of the following:
 - (A) Hydraulic lift tanks.
 - (B) Electrical equipment tanks.
- (4) Any UST system whose capacity is one hundred ten (110) gallons or less, except an owner and operator with two (2) or more UST systems on-site whose individual capacities are one hundred ten (110) gallons or less are not excluded if the total capacity of all tanks on-site containing the same product exceeds one hundred ten (110) gallons.
- (5) Any UST system that contains a de minimis concentration of regulated substances.
- (6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) 329 IAC 9-2 through 329 IAC 9-4, 329 IAC 9-6, and 329 IAC 9-7 do not apply to any of the following types of UST systems:

- (1) Wastewater treatment tank systems.
- (2) Any UST system containing radioactive material that is regulated under the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., as amended, in effect on April 26, 1996.
- (3) Any UST system that is part of an emergency generator

system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A.
 (4) Airport hydrant fuel distribution systems.
 (5) UST systems with field-constructed tanks.

(d) 329 IAC 9-7 does not apply to any UST system that stores fuel solely for use by emergency power generators.

(e) Unless specified in the ~~incorporated by reference~~ documents incorporated **by reference** in this article, the version of documents referenced in the incorporated by reference documents is the latest version that is in effect on the date of final adoption of the incorporated by reference documents into **a section of** this article.

(f) Owners or operators:

- (1) **performing a task or measure before the effective date of the 2004 amendments to this article; or**
- (2) **taking an action, such as submitting reports, plans, or notifications received by the agency on a date before the effective date of the 2004 amendments to this article; will be governed by this article before it was amended in 2004.**

(g) Owners or operators completing any requirement of this article, including:

- (1) **performing a task or measure on or after the effective date of the 2004 amendments to this article; or**
- (2) **taking an action, such as submitting reports, plans, or notifications received by the agency on a date on or after the effective date of the 2004 amendments to this article; will be governed by this article as amended in 2004.** (*Solid Waste Management Board; 329 IAC 9-1-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1062; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3683; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 2. 329 IAC 9-1-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-4 “Agency” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 4. “Agency” means the department of environmental management. ~~underground storage tank branch.~~ This definition is not applicable under 329 IAC 9-8. (*Solid Waste Management Board; 329 IAC 9-1-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1063; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3685; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 3. 329 IAC 9-1-10.4 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-10.4 “Change-in-service” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Proposed Rules

Sec. 10.4. “Change-in-service” means continued use of the UST or UST system to store a nonregulated substance. (*Solid Waste Management Board; 329 IAC 9-1-10.4*)

SECTION 4. 329 IAC 9-1-10.6 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-10.6 “Chemical of concern” or “COC” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 10.6. “Chemical of concern” or “COC” means the parameter to be analyzed as a possible contaminant. (*Solid Waste Management Board; 329 IAC 9-1-10.6*)

SECTION 5. 329 IAC 9-1-10.8 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-10.8 “Closure” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-13-1-1; IC 13-23

Sec. 10.8. “Closure” means the owner or operator has met all the program requirements of 329 IAC 9-6. The term does not imply that the site is completely free of contaminants. Some acceptable level of contaminants may still be on site. (*Solid Waste Management Board; 329 IAC 9-1-10.8*)

SECTION 6. 329 IAC 9-1-14 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-14 “Consumptive use” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-241; IC 13-13-1-1; IC 13-23

Sec. 14. “Consumptive use”, with respect to heating oil, means consumed on the premises on which the tank is stored. The heating oil exclusion under IC 13-11-2-241(b)(2) does not apply to the storage of heating oil for resale, marketing, or distribution. (*Solid Waste Management Board; 329 IAC 9-1-14; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1064; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 7. 329 IAC 9-1-14.3 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-14.3 “Contaminant” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-42; IC 13-13-1-1; IC 13-23

Sec. 14.3. “Contaminant” has the meaning set forth at IC 13-11-2-42. However, for purposes of this article, the term does not include hazardous waste regulated under 329 IAC 3.1. (*Solid Waste Management Board; 329 IAC 9-1-14.3*)

SECTION 8. 329 IAC 9-1-14.5 IS ADDED TO READ AS

FOLLOWS:

329 IAC 9-1-14.5 “Corrective action” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 14.5. “Corrective action” means action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including emergency measures taken as part of an initial response to the release under 329 IAC 9-5-2. (*Solid Waste Management Board; 329 IAC 9-1-14.5*)

SECTION 9. 329 IAC 9-1-14.7 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-14.7 “Corrective action plan” or “CAP” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 14.7. “Corrective action plan” or “CAP” means the corrective action plan described under 329 IAC 9-5-7(a) through 329 IAC 9-5-7(b). (*Solid Waste Management Board; 329 IAC 9-1-14.7*)

SECTION 10. 329 IAC 9-1-25 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-25 “Hazardous substance UST system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 25. “Hazardous substance UST system” means a UST system that contains any of the following:

- (1) A hazardous substance that is:
 - (A) defined in Section 101(14) of CERCLA (42 U.S.C. 9601(14)); and
 - (B) not regulated as a hazardous waste under 329 IAC 3.1.
- (2) Any mixture of such substances specified in subdivision (1)(A) or (1)(B) and petroleum and which that is not a petroleum UST system.

(*Solid Waste Management Board; 329 IAC 9-1-25; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 11. 329 IAC 9-1-27 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-27 “Hydraulic lift tank” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 27. “Hydraulic lift tank” means a tank that holds hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate any of the following:

- (1) Lifts.
- (2) Elevators.

(3) ~~Other similar~~ Devices similar to those in subdivision (1) or (2).

(Solid Waste Management Board; 329 IAC 9-1-27; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 12. 329 IAC 9-1-36 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-36 “Petroleum UST system” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 36. “Petroleum UST system” means ~~a~~ **an** UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing any of the following:

- (1) Motor fuels.
- (2) Jet fuels.
- (3) Distillate fuel oils.
- (4) Residual fuel oils.
- (5) Lubricants.
- (6) Petroleum solvents.
- (7) Used oils.

(Solid Waste Management Board; 329 IAC 9-1-36; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1066; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3692; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 13. 329 IAC 9-1-36.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-36.5 “Piezometer” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 36.5. “Piezometer” means a type of monitoring well or other device that is constructed for the purpose of measuring hydraulic head in the ground water. *(Solid Waste Management Board; 329 IAC 9-1-36.5)*

SECTION 14. 329 IAC 9-1-39.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-39.5 “Removal closure” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 39.5. “Removal closure” means a closure where an UST system is completely extracted. *(Solid Waste Management Board; 329 IAC 9-1-39.5)*

SECTION 15. 329 IAC 9-1-41.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-41.5 “SARA” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 41.5. “SARA” means the Superfund Amendments and Reauthorization Act of 1986, as amended, 42 U.S.C. 9601, et seq., in effect on September 30, 1996, that amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. *(Solid Waste Management Board; 329 IAC 9-1-41.5)*

SECTION 16. 329 IAC 9-1-47 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-47 “Underground release” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 47. “Underground release” means any ~~belowground~~ release **beneath the ground surface**. *(Solid Waste Management Board; 329 IAC 9-1-47; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 17. 329 IAC 9-1-47.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-47.1 “Underground storage tank” or “UST” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-241

Sec. 47.1. “Underground storage tank” or “UST” has the meaning as set forth in IC 13-11-2-241. *(Solid Waste Management Board; 329 IAC 9-1-47.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3694; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 18. 329 IAC 9-2-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-2-1 New UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23; IC 25-31-1

Sec. 1. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems shall meet the following requirements:

(1) Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion as specified under one (1) of the following:

(A) The tank is constructed of fiberglass-reinforced plastic and meets one (1) of the following:

(i) Underwriters Laboratories Standard 1316, “Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohol, and Alcohol-Gasoline Mixtures”, ~~1994~~, **1996**, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(ii) Underwriters Laboratories of Canada ~~CAN-615-M83~~, **CAN/ULC-S615-1998**, “Standard for Reinforced

Plastic Underground Tanks for Petroleum Products”, ~~1983~~, **1998**, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.
(iii) ASTM D4021-86, “Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks”, revised 1992, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959.

(B) The tank is constructed of steel and cathodically protected in the following manner:

- (i) The tank is coated with a suitable dielectric material and is cathodically protected.
- (ii) Field-installed impressed current systems are designed by a corrosion expert to allow determination of current operating status under 329 IAC 9-3.1-2(3).
- (iii) Cathodic protection systems are operated and maintained under 329 IAC 9-3.1-2.
- (iv) The tank complies with one (1) or more of the following:

(AA) Steel Tank Institute “sti-P₃® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks”, STI-P3-98, revised 1998, Steel Tank Association, 570 Oakwood Road, Lake Zurich, Illinois 60047.

(BB) Underwriter Laboratories Standard 1746, “External Corrosion Protection Systems for Steel Underground Storage Tanks”, ~~1993~~, **2000**, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(CC) Underwriters Laboratories of Canada ~~CAN4-S603-M85~~, **CAN/ULC-S603-92**, “Standards for Steel Underground Tanks for Flammable and Combustible Liquids”, **1992**, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.

(DD) Underwriter Laboratories of Canada ~~CAN4-603.1-M85~~, **CAN/ULC-603.1-92**, “Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids”, **1992**, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.

(EE) Underwriters Laboratories of Canada CAN4-S631-M84, “Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems”, **1992**, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.

(FF) NACE International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, “Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”, revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.

(GG) Underwriters Laboratories Standard 58, “Steel Underground Tanks for Flammable and Combustible

Liquids”, ~~1986~~, **1998**, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(C) The tank is constructed of a steel-fiberglass-reinforced-plastic composite and complies with one (1) or more of the following:

(i) Underwriters Laboratories Standard 1746, “External Corrosion Protection Systems for Steel Underground Storage Tanks”, ~~1993~~, **2000**, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(ii) Association for Composite Tanks ACT-100®, “Specification for External Corrosion Protection of FRP Composite Steel USTs, F894-98”, revised 1998, Steel Tank Association, 570 Oakwood Road, Lake Zurich, Illinois 60047.

(D) The tank is constructed of metal without additional corrosion protection measures provided that the following requirements are completed:

- (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life.
- (ii) The owner and operator shall demonstrate that soil resistivity in an installation location is twelve thousand (12,000) ohms per centimeter or greater by using one (1) of the following:

(AA) ASTM Standard ~~G57-78~~ **G57-95a**, “Standard Test Method for Field Measurement of Soil Resistivity Using the Wenner Four-Electrode Method”, revised ~~1978~~, **1995**, reapproved ~~1984~~, **2001**. American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959.

(BB) A standard approved by the commissioner that exhibits the same or greater degree of reliability and accuracy as ASTM Standard ~~G57-78~~ **G57-95a** cited in subitem (AA).

(iii) The owner and operator shall maintain records that demonstrate compliance with items (i) and (ii) for the remaining life of the tank.

(E) The tank construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than clauses (A) through (D).

(2) The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion as specified under one (1) of the following:

(A) The piping is constructed of fiberglass-reinforced plastic and complies with one (1) or more of the following:

(i) Underwriters Laboratories Standard 971, “Nonmetallic Underground Piping for Flammable Liquids”, 1995, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

- (ii) Underwriters Laboratories Standard 567, **revised 2001**, "Pipe Connectors for Petroleum Products and LP Gas", Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.
 - (iii) Underwriters Laboratories of Canada Subject ~~EN107C-M1984~~ **CAN/ORD-C 107.7-1993** "Guide for Glass Fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids", **1993**, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.
 - (iv) Underwriters Laboratories of Canada Standard ~~CAN4-S633-M84~~, **CAN/ULC-S633-99**, "Flexible Underground Hose Connectors", **1999**, Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, M1R 3A9 Canada.
- (B) The piping is constructed of steel and cathodically protected in the following manner:
- (i) The piping is coated with a suitable dielectric material and is cathodically protected.
 - (ii) Field-installed impressed current systems are designed by a corrosion expert to allow determination of current operating status under 329 IAC 9-3.1-2(3).
 - (iii) Cathodic protection systems are operated and maintained under 329 IAC 9-3.1-2.
 - (iv) The piping system meets one (1) or more of the following:
 - (AA) ~~Article 79~~, "Flammable and Combustible Liquids", of the ~~1998~~ Indiana Fire Code under rules of the fire prevention and building safety commission at ~~675 IAC 22-2.2~~. **675 IAC 22.**
 - (BB) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems", Fifth Edition, March 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (CC) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
 - (DD) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems", 1992 Edition, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
- (C) The piping is constructed of metal without additional corrosion protection measures provided that the following requirements are completed:
- (i) The piping is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life.
 - (ii) The owner and operator shall demonstrate that soil resistivity in an installation location is twelve thousand (12,000) ohms per centimeter or greater by using one (1)

of the following:

- (AA) ASTM Standard ~~G57-78~~, **G57-95a**, "Standard Test Method for Field Measurement of Soil Resistivity Using the Wenner Four-Electrode Method", revised ~~1978~~, **1995**, reapproved ~~1984~~. **2001**. American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959.
 - (BB) A standard approved by the commissioner that exhibits the same or greater degree of reliability and accuracy as ASTM Standard ~~G57-78~~ **G57-95a** cited in subitem (AA).
- (iii) The piping complies with one (1) or more of the following:
- (AA) ~~Article 79~~, "Flammable and Combustible Liquids", of the ~~1998~~ Indiana Fire Code under rules of the fire prevention and building safety commission at ~~675 IAC 22-2.2~~. **675 IAC 22.**
 - (BB) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems", 1992 Edition, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
- (iv) The owner and operator shall maintain records that demonstrate compliance with items (i) and (ii) for the remaining life of the piping.
- (D) The piping is equipped with secondary containment that includes one (1) of the following:
- (i) Double-walled piping that consists of an outer wall constructed of a dielectric material.
 - (ii) Vaulted piping.
- (E) The piping construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than clauses (A) through (D).
- (3) The following spill and overfill requirements must be completed:
- (A) Except as provided in clause (B), the owner and operator shall use the following spill and overfill prevention equipment to prevent spilling and overfilling associated with product transfer to the UST system:
 - (i) Spill prevention equipment that prevents the release of product to the environment when the transfer hose is detached from the fill pipe as one (1) of the following:
 - (AA) Minimum five (5) gallon spill catchment basin with drain to tank.
 - (BB) Minimum twenty-five (25) gallon spill catchment basin without drain to tank.
 - (ii) Overfill prevention equipment that completes one (1) of the following:
 - (AA) Automatically shuts off flow into the tank when the tank is no more than ninety-five percent (95%) full.
 - (BB) Alerts the transfer operator when the tank is no more than ninety percent (90%) full by restricting the

flow into the tank or triggering a high level alarm.

(CC) Restricts flow thirty (30) minutes prior to overfilling, alerts the transfer operator with a high level alarm one (1) minute before overfilling, or automatically shuts off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(B) The owner and operator are not required to use the spill and overfill prevention equipment specified in clause (A) if one (1) of the following is completed:

(i) Alternative equipment is used that is determined by the commissioner to be no less protective of human health and the environment than the equipment specified in clause (A).

(ii) The UST system is filled by transfers of no more than twenty-five (25) gallons at one (1) time.

(C) A drop tube for deliveries must extend to within one (1) foot of the tank bottom.

(4) All tanks and piping must be installed properly in accordance with one (1) or more of the following:

(A) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems", Fifth Edition, March 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(B) Petroleum Equipment Institute Publication PEI/RP100-97, "Recommended Practices for Installation of Underground Liquid Storage Systems", revised ~~1997~~, **2000**, Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101-2380.

(C) American National Standards Institute Standard ANSI/ASME B31.3-1996, "Process Piping", ~~1996~~, revised **1999**, American National Standards Institute, 11 West 42nd Street, New York, New York 10036. ASME B31.3a-1996, addenda to ASME B31.3-1996 Edition, Process Piping, An American National Standard, The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017. ASME B31.3b-1997, addenda to ASME B31.3-1996 Edition, Process Piping, An American National Standard, the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.

(D) American National Standards Institute Standard ANSI/ASME B31.4-1992, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols", ~~1992~~, revised **1998**, American National Standards Institute, 11 West 42nd Street, New York, New York 10036. ASME B31.4a, addenda to ASME B31.4-1992 Edition, Pipeline Transportation Systems For Liquid Hydrocarbons and Other Liquids, An American National Standard, The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.

(5) The owner and operator shall ensure the following:

(A) The installer has been certified by the office of the state fire marshal under rules of the fire prevention and building

safety commission at 675 IAC 12-12.

(B) One (1) or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subdivision (4):

(i) The installer has been certified by the tank and piping manufacturers.

(ii) The installation has been inspected and certified by a registered professional engineer under IC 25-31-1 with education and experience in UST system installation.

(iii) The installation has been inspected and approved by one (1) of the following:

(AA) The agency.

(BB) The office of the state fire marshal.

(iv) The owner and operator have complied with another method for ensuring compliance with subdivision (4) that is determined by the commissioner to be no less protective of human health and the environment.

(C) The owner and operator shall provide a certification of compliance on the ~~underground storage tank~~ notification form under section 2 of this rule.

(Solid Waste Management Board; 329 IAC 9-2-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3695; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 19. 329 IAC 9-2-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-2-2 Notification requirements

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-3

Sec. 2. (a) **All notifications required to be submitted under this section must be submitted on a form and in a format prescribed by the commissioner.**

~~(a)~~ **(b) Any owner person who brings a owns an UST system into use or tank shall, within thirty (30) days of owning such an UST system or tank or bringing such tank or UST system into use, submit notice to the agency to register the tank or UST system. using a form provided by the agency for this notification. Bringing a tank or UST system "into use" means the tank or UST system contains or has contained a regulated substance and has not been closed under 329 IAC 9-6.**

~~(b)~~ **(c) An owner required to submit notice under subsection (a) shall provide notice for each tank the owner owns. The owner may provide notice for several tanks at one (1) location using one (1) form. An owner with tanks located in more than one (1) place of operation shall submit a separate notification form for each separate place of operation.**

~~(c)~~ **(d) An owner required to submit notice under subsection (a) shall provide all the information required by the form provided by the agency for each tank for which notice is submitted.**

~~(d)~~ (e) All owners and operators of new UST systems shall certify, on each notification form submitted, with original signature in ink, compliance with the following requirements:

- (1) Installation of all tanks and piping under section 1(5) of this rule.
- (2) Cathodic protection of steel tanks and piping under section 1(1) ~~of this rule~~ and ~~section~~ 1(2) of this rule.
- (3) Release detection under 329 IAC 9-7-2 and 329 IAC 9-7-3.
- (4) Financial responsibility under 329 IAC 9-8.

~~(e)~~ (f) All owners and operators of UST systems shall ensure that whoever performs tank system:

- (1) installations;
- (2) testing;
- (3) upgrades;
- (4) closures;
- (5) removals; and
- (6) change-in-service;

is certified by the office of the state fire marshal. The certified person who performs the work shall certify, by original signature in ink on the notification form provided by the agency, that the work performed complies with methods specified by section 1(4) of this rule.

~~(f)~~ (g) All owners and operators of UST systems who upgrade the tank system to meet upgrade requirements under 329 IAC 9-2.1 shall, within thirty (30) days of completing the upgrade, submit notice of the upgrade to the agency. ~~as required by subsection (a):~~

~~(g)~~ (h) All owners and operators of UST systems who:

- (1) temporarily close a tank system under 329 IAC 9-6-5; or
- (2) ~~permanently close or perform a change-in-service on~~ a tank system under 329 IAC 9-6-1;

shall, within thirty (30) days of completing such action, submit notice of this action to the agency. ~~as required by subsection (a):~~

~~(h)~~ (i) All owners and operators of UST systems who install a method of release detection under 329 IAC 9-7-2 and 329 IAC 9-7-3 shall, within thirty (30) days of completing such action, submit notice of this action to the agency. ~~as required by subsection (a):~~

~~(i)~~ (j) Any person who sells a facility with a regulated underground storage tank that:

- (1) is being used as ~~a~~ **an** UST system; or
- (2) will be used as ~~a~~ **an** UST system;

shall notify the purchaser of such tank of the owner's obligation to submit notice under subsection ~~(a):~~ **(b).**

~~(j)~~ (k) An owner and operator of ~~a~~ **an** UST system that is:

- (1) in the ground on or after May 8, 1986; and
- (2) not taken out of operational life on or before January 1, 1974;

shall notify the agency of the service status of the UST system

under 42 U.S.C. 6991a of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996, on a form provided by the agency for this notification. (*Solid Waste Management Board; 329 IAC 9-2-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3699; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 20. 329 IAC 9-2.1-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-2.1-1 Upgrading of existing UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-3

Sec. 1. (a) All existing UST systems shall comply with one (1) of the following requirements no later than December 22, 1998:

- (1) New UST system performance standards under 329 IAC 9-2-1.
- (2) The upgrading requirements under subsections (b) through (d).
- (3) Closure requirements under 329 IAC 9-6, including applicable requirements for corrective action under 329 IAC 9-5.

(b) A steel tank must be upgraded to meet one (1) of the following requirements:

- (1) A tank is upgraded by cathodic protection and the cathodic protection system meets the requirements of 329 IAC 9-2-1(1)(B)(ii) and 329 IAC 9-2-1(1)(B)(iii), and the integrity of the tank is ensured using one (1) of the following methods:

(A) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system.

(B) The tank has been installed for less than ten (10) years and is monitored monthly for releases under 329 IAC 9-7-4(4) through 329 IAC 9-7-4(8).

(C) The tank has been installed for less than ten (10) years and is assessed for corrosion holes by conducting two (2) tightness tests under 329 IAC 9-7-4(3) **as follows:**

(i) The first tightness test must be conducted prior to installing the cathodic protection system. ~~and~~

(ii) The second tightness test must be conducted between three (3) months and six (6) months following the first operation of the cathodic protection system.

(D) The tank is assessed for corrosion holes by a method that is determined by the commissioner to prevent releases in a manner that is no less protective of human health and the environment than established in clauses (A) through (C).

(2) A tank is upgraded by internal lining and the following requirements are completed:

(A) The lining is installed under 329 IAC 9-3.1-4.

(B) Within one (1) year after lining and every five (5) years thereafter, the ~~lined lining and~~ tank ~~is~~ **are** internally

inspected and found to be structurally sound with the lining **and tank** still performing in accordance with ~~original design specifications~~ **requirements under 329 IAC 9-3.1-4.**

(C) The tank may be lined one (1) time during the service life to meet the upgrading requirements of this subsection.

(D) If the lined tank cannot meet the performance standards under clause (B), closure of the tank according to 329 IAC 9-6 is required.

(3) A tank is upgraded by both internal lining and cathodic protection, and the following requirements are completed:

(A) The lining is installed under 329 IAC 9-3.1-4.

(B) The cathodic protection system meets the requirements of 329 IAC 9-2-1(1)(B)(ii) and 329 IAC 9-2-1(1)(B)(iii).

(4) A tank is upgraded by a method that is determined by the commissioner to be no less protective of human health and the environment than the methods specified in subdivisions (1) through (3).

(5) The tank must comply with one (1) or more of the following:

(A) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", ~~Fourth~~ **Fifth** Edition, ~~October 1997~~, **June 2001**, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(B) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.

(C) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(D) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection", revised ~~1991~~, **1992**, National Leak Prevention Association, Route 2, Box 106A, Falmouth, Kentucky 41040.

(c) Metal piping that routinely contains regulated substances and is in contact with the ground must meet the following:

(1) Be cathodically protected in accordance with one (1) or more of the following:

(A) ~~Article 79~~, "Flammable and Combustible Liquids", of the ~~1998~~ **Indiana Fire Code**, ~~675 IAC 22-2.2~~, **675 IAC 22.**

(B) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems", Fifth Edition, March 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(C) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May

1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(D) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems", ~~1992~~ **1996** Edition, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.

(2) Meet the requirements of 329 IAC 9-2-1(2)(B)(ii) and 329 IAC 9-2-1(2)(B)(iii).

(d) All existing UST systems shall comply with the new UST system spill and overfill prevention equipment requirements under 329 IAC 9-2-1(3) and 329 IAC 9-3.1-1 to prevent spilling and overfilling associated with product transfer to the UST system.

(e) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the ~~underground storage tank~~ notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal. (*Solid Waste Management Board; 329 IAC 9-2.1-1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3700*)

SECTION 21. 329 IAC 9-3-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-3-1 Reporting and record keeping

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 1. (a) The owner and operator of ~~a~~ **an** UST system shall cooperate fully with inspections, monitoring, and testing conducted by the agency, as well as requests for document submission, testing, and monitoring by the owner or operator under Section 9005 (42 U.S.C. 6991d) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996.

(b) The owner and operator shall submit the following information to the agency:

(1) Notification for all UST systems under 329 IAC 9-2-2 that includes **the following**:

(A) Certification of installation for new UST systems under 329 IAC 9-2-1(5). ~~and~~

(B) Locational information within an accuracy of 1:24,000, plus or minus forty (40) feet, or plus or minus twelve and two-tenths (12.2) meters in any of the following formats, if known:

(i) Universal transverse mercator (UTM) coordinates.

(ii) Latitude and longitude coordinates.

(iii) UTM coordinates and latitude and longitude coordinates.

(2) Reports of all releases, including **the following**:

(A) Suspected releases under 329 IAC 9-4-1.

- (B) Spills and overfills under 329 IAC 9-4-4. ~~and~~
- (C) Confirmed releases under 329 IAC 9-5-2.
- (3) Corrective actions planned or taken, including the following:
 - (A) Free product removal under ~~329 IAC 9-5-3.1~~; **329 IAC 9-5-4.2.**
 - (B) Initial abatement measures under ~~329 IAC 9-5-4.1~~; **329 IAC 9-5-3.2.**
 - (C) Initial site characterization under 329 IAC 9-5-5.1.
 - (D) Investigation of soil and ground water cleanup under 329 IAC 9-5-6. ~~and~~
 - (E) Corrective action plan under 329 IAC 9-5-7.
- (4) A notification upon completion of all upgrade activities under 329 IAC 9-2.1.
- (5) A notification before ~~permanent~~ closure or change-in-service under 329 IAC 9-6-1.
- (6) A notification upon completion of:
 - (A) temporary closure under 329 IAC 9-6-5; or
 - (B) ~~permanent~~ closure or change-in-service under 329 IAC 9-6-1 and ~~329 IAC 9-6-2~~; **329 IAC 9-6-2.5.**
- (7) A notification upon completion of the installation of a method of release detection under 329 IAC 9-7-2 and 329 IAC 9-7-3.
- (8) Results of the site investigation conducted at ~~permanent~~ closure or change-in-service under 329 IAC 9-6-4.
- (9) Documentation supporting the suitability of the underground storage tank to be upgraded with cathodic protection. The documentation must be submitted within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(1). The documentation must include a signed affidavit from the corrosion expert who designed the field-installed cathodic protection system.
- (10) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining. The documentation must be submitted within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(2).
- (11) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining combined with cathodic protection. The documentation must be submitted within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(3). The documentation also must include the following:
 - (A) A report of the condition of the underground storage tank prior to lining that includes the following:
 - (i) ~~A~~ diagram showing the location and size of any repair necessary to the interior of the underground storage tank prior to lining.
 - (ii) ~~A~~ diagram showing the location and size of any repair necessary to the exterior of the underground storage tank prior to cathodic protection.
 - (iii) Documentation showing the tank has met both thickness and tank deflection criteria specified in the publications for upgrades under clause (B).
 - (B) The suitability of the tank for lining must meet the

following requirements:

- (i) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", ~~Fourth~~ **Fifth** Edition, ~~October 1997~~, **June 2001**, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
- (ii) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
- (iii) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
- (12) Documentation of operation and maintenance of corrosion protection equipment under 329 IAC 9-3.1-2. The results of the postinstallation cathodic protection:
 - (A) test for a galvanic cathodic protection system; and
 - (B) inspection for an impressed current cathodic protection system;
 must be submitted within thirty (30) days after the test or inspection is completed for a new UST system and an upgraded UST system.
- (13) Documentation supporting the suitability of the excavation zone for the proper function of:
 - (A) vapor observation wells under 329 IAC 9-7-4(5); and
 - (B) ground water observation wells under 329 IAC 9-7-4(6);
 as a method of release detection. The documentation must be submitted within thirty (30) days after the observation wells installation is completed for a new UST system and an upgraded UST system.
- (14) Documentation supporting the suitability of the excavation zone to support a secondary barrier in the excavation zone as a method of release detection under 329 IAC 9-7-4(7)(B). The documentation must be submitted within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.
- (15) Documentation supporting the suitability of the secondary barrier as a method of release detection under 329 IAC 9-7-4(7)(B). The documentation must be submitted within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.
- (c) The owner and operator shall maintain the following information:
 - (1) Documentation of operation and maintenance of corrosion protection equipment under 329 IAC 9-3.1-2. The results of the postinstallation cathodic protection:
 - (A) test for a galvanic cathodic protection system; and
 - (B) inspection for an impressed current cathodic protection

system;

must be maintained under ~~subsection~~ **subsections (d) and (e)** within thirty (30) days after the test or inspection is completed for a new UST system and an upgraded UST system.

(2) Documentation of UST system repairs under 329 IAC 9-3.1-4(b)(6).

(3) Documentation of compliance with release detection requirements under ~~329 IAC 9-7-6~~; **this section**.

(4) Results of the site investigation conducted at ~~permanent~~ closure under 329 IAC 9-6-4.

(5) Documentation supporting the suitability of the underground storage tank to be upgraded with cathodic protection. The documentation must be maintained under ~~subsection~~ **subsections (d) and (e)** within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(1). The documentation must include a signed affidavit from the corrosion expert who designed the field-installed cathodic protection system.

(6) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining. The documentation must be maintained under ~~subsection~~ **subsections (d) and (e)** within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(2).

(7) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining combined with cathodic protection. The documentation must be maintained under ~~subsection~~ **subsections (d) and (e)** within thirty (30) days after the determination is completed under 329 IAC 9-2.1-1(b)(3). The documentation also must include the following:

(A) A report of the condition of the underground storage tank prior to lining that includes the following:

- (i) A diagram showing the location and size of any repair necessary to the interior of the underground storage tank prior to lining.
- (ii) A diagram showing the location and size of any repair necessary to the exterior of the underground storage tank prior to cathodic protection.
- (iii) Documentation showing the tank has met both thickness and tank deflection criteria specified in the publications for upgrades under clause (B).

(B) A signed certification by a corrosion expert indicating the suitability of the tank for lining under the following:

- (i) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", ~~Fourth~~ **Fifth** Edition, ~~October 1997~~, **June 2001**, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
- (ii) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.
- (iii) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May

1996, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(8) Documentation supporting the suitability of the excavation zone for the proper function of:

- (A) vapor observation wells under 329 IAC 9-7-4(5); and
- (B) ground water observation wells under 329 IAC 9-7-4(6);

as a method of release detection. The documentation must be maintained under ~~subsection~~ **subsections (d) and (e)** within thirty (30) days after the observation wells installation is completed for a new UST system and an upgraded UST system.

(9) Documentation supporting the suitability of the excavation zone to support a secondary barrier under 329 IAC 9-7-4(7)(B). The documentation must be maintained under ~~subsection~~ **subsections (d) and (e)** within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.

(10) Documentation supporting the suitability of the secondary barrier as a method of release detection under 329 IAC 9-7-4(7)(B). The documentation must be maintained under ~~subsection~~ **subsections (d) and (e)** within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.

(11) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used under 329 IAC 9-2-1(1)(D) or 329 IAC 9-2-1(2)(C). The documentation must be maintained under ~~subsection~~ **subsections (d) and (e)** within thirty (30) days after the analysis is completed.

(12) All written performance claims that pertain to any release detection system used and the manner in which the claim has been justified or tested by the equipment manufacturer or installer. All claims must be maintained for the longest of the following time periods:

- (A) Five (5) years.**
- (B) The time period the release detection system is used.**
- (C) The time period of any unresolved litigation between the commissioner and the owner or operator of the UST system.**

(13) The results of any sampling, testing, or monitoring relating to release detection systems must be maintained for at least one (1) year except that the results of tank tightness testing conducted under 329 IAC 9-7-4(3) must be maintained until the next test is conducted.

(14) Documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one (1) year after the servicing work is completed.

(15) Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be maintained for the longest of the following time periods:

- (A) Five (5) years from the date of installation.**
- (B) The time period the release detection system is used.**

(d) The owner and operator shall maintain the records required at:

- (1) at the underground storage tank site and immediately available for inspection by the agency; or
- (2) at a readily available alternative site and be provided for inspection to the agency upon request. or

(3) (e) In the case of permanent closure records required under 329 IAC 9-6-4, the owner and operator are also provided with the additional alternative of mailing closure records to the agency if they cannot be kept at the site or an alternative site as indicated allowed in this subsection (d)(2). (*Solid Waste Management Board; 329 IAC 9-3-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1069; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3701; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 22. 329 IAC 9-3-2 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-3-2 Electronic reporting and submittal

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 2. Documentation required to be submitted to the agency by this article, with the exception of reports required under 329 IAC 9-4-4, may be submitted in an electronic format as prescribed by the commissioner. Any documents submitted in an electronic format must also be submitted as a paper copy unless the commissioner makes a determination that only an electronic copy is needed. (*Solid Waste Management Board; 329 IAC 9-3-2*)

SECTION 23. 329 IAC 9-3.1-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-3.1-1 Spill and overflow control

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 1. (a) The owner and operator shall ensure the following:

- (1) Releases due to spilling or overfilling do not occur.
- (2) The volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made.
- (3) The transfer operation is monitored constantly to prevent overfilling and spilling.
- (4) The transfer operation complies with the following:
 - (A) National Fire Protection Association Publication 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids", 1990 Edition, as incorporated by reference under rules of the fire prevention and building safety commission at 675 IAC 22-2.2-21.
 - (B) Article 79, "Flammable and Combustible Liquids", of the 1998 Indiana Fire Code under rules of the fire prevention and building safety commission at 675 IAC 22-2.2. 675 IAC 22.

(b) The owner and operator shall report, investigate, and clean up any spills and overfills under 329 IAC 9-4-4.

(c) Deliveries must be made through a drop tube that extends to within one (1) foot of the tank bottom. (*Solid Waste Management Board; 329 IAC 9-3.1-1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3704*)

SECTION 24. 329 IAC 9-3.1-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-3.1-2 Operation and maintenance of corrosion protection

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 2. The owner and operator of a steel UST system with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that:

- (A) routinely contain regulated substances; and
- (B) are in contact with the ground.

- (2) All UST systems equipped with galvanic cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester under the following requirements:

- (A) All galvanic cathodic protection systems must be tested within six (6) months of installation and at least every three (3) years thereafter.
- (B) Nace International (formerly the National Association of Corrosion Engineers) Standard RP0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", revised 1995, NACE International, P.O. Box 218340, Houston, Texas 77218-8340.

- (3) All UST systems with impressed current cathodic protection systems must be:

- (A) inspected every sixty (60) days to ensure the equipment is running according to manufacturer's specifications; and
- (B) tested within six (6) months of installation and at least every three (3) years thereafter.

- (4) Records of the operation of the cathodic protection must be maintained under 329 IAC 9-3 to demonstrate compliance with the performance standards in this section. These records must provide the results of the following:

- (A) The results of The most recent three (3) inspections required in subdivision (3).
- (B) The results of Testing from the last two (2) inspections required in subdivision (2).

- (5) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the underground storage tank notification form under 329 IAC 9-2-2. The certification must demonstrate that the person

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that performs the work has been certified by the office of the state fire marshal.

(Solid Waste Management Board; 329 IAC 9-3.1-2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3704)

SECTION 25. 329 IAC 9-3.1-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-3.1-3 Compatibility

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 3. (a) The owner and operator shall use ~~a~~ **an** UST system made of or lined with materials that are compatible with the regulated substance stored in the UST system.

(b) For tanks that store alcohol blends, one (1) or more of the following codes must be used to comply with subsection (a):

(1) American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations", First Edition, April 1985, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(2) American Petroleum Institute Recommended Practice 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations", First Edition, August 1986, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.
(Solid Waste Management Board; 329 IAC 9-3.1-3; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3704)

SECTION 26. 329 IAC 9-3.1-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-3.1-4 Repairs and maintenance allowed

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 4. (a) The owner and operator of ~~a~~ **an** UST system shall ensure that repairs **and maintenance** prevent releases due to:

(1) structural failure; ~~as long as the UST system is used to store regulated substances;~~ or

(2) corrosion;

as long as the UST system is used to store regulated substances.

(b) The repairs **and maintenance** must meet the following requirements:

(1) Repairs **and maintenance** to a steel UST system must be conducted in accordance with one (1) or more of the following:

(A) ~~Article 79,~~ "Flammable and Combustible Liquids", of the ~~1998~~ Indiana Fire Code, ~~675 IAC 22-2-2.~~ **675 IAC 22.**

(B) American Petroleum Institute Recommended Practice 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines", Third Edition, May 1994, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", ~~Fourth~~ **Fifth** Edition, ~~October 1997,~~ **June 2001**, American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070.

(D) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection", revised ~~1991,~~ **1992**, National Leak Prevention Association, Route 2, Box 106A, Falmouth, Kentucky 41040.

(2) Maintenance to a steel tank lined under section 2 of this rule is not allowed if thirty percent (30%) or more of the original lined surface of the steel tank has had maintenance performed under subdivision (1). The tank must be closed according to 329 IAC 9-6.

~~(2)~~ **(3) Repairs and maintenance** to a fiberglass-reinforced plastic tank may be made **by the:**

(A) ~~by the~~ manufacturer's authorized representative using the manufacturer's specifications; or

(B) ~~by the~~ owner or operator in accordance with one (1) or more of the following:

(i) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohol, and Alcohol-Gasoline Mixtures", ~~1994,~~ **1996**, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(ii) Codes listed in Class 6 of American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", ~~Fourth~~ **Fifth** Edition, ~~October 1997,~~ **June 2001**, American Petroleum Institute, 1220 L Street NW, Washington, D. C. 20005-4070.

(iii) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection", revised ~~1991,~~ **1992**, National Leak Prevention Association, Route 2, Box 106A, Falmouth, Kentucky 41040.

~~(3)~~ **(4) The requirements for repair and maintenance to pipes and fittings are as follows:**

(A) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced.

(B) Fiberglass pipes and fittings may be repaired **or have maintenance performed** in accordance with the manufacturer's specifications.

~~(4)~~ **(5) The repaired tank and piping must be tightness tested under 329 IAC 9-7-4(3) and 329 IAC 9-7-5(2) within thirty (30) days following the date of the completion of the repair except as provided under one (1) of the following:**

(A) The repaired tank is internally inspected in accordance with one (1) or more of the standards listed in subdivision (1) or ~~(2).~~ **(3).**

(B) The repaired portion of the UST system is monitored

monthly for releases under a method specified in 329 IAC 9-7-4(4) through 329 IAC 9-7-4(8).

(C) Another test method is used that is determined by the commissioner to be no less protective of human health and the environment than those listed in clauses (A) and (B).

~~(5)~~ (6) Following the repair of any cathodically protected UST system, the cathodic protection system must be tested under:

(A) section 2(2) of this rule within six (6) months following the repair for a galvanic cathodic protection system; ~~to ensure that it is operating properly;~~ and

(B) section 2(3) of this rule within sixty (60) days following the repair for an impressed current cathodic protection system;

to ensure that it is operating properly.

~~(6)~~ (7) The UST system owner and operator shall maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with this section.

Maintenance must be documented but is not required to be reported to the agency.

~~(7)~~ (8) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the ~~underground storage tank~~ notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal.

(Solid Waste Management Board; 329 IAC 9-3.1-4; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3705)

SECTION 27. 329 IAC 9-4-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-4-3 Release investigations and confirmation steps

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 3. Unless corrective action is initiated in accordance with 329 IAC 9-5, the owner and operator shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 1 of this rule within seven (7) days using the following steps or another procedure approved by the commissioner:

(1) The owner and operator shall conduct tests according to the requirements for tightness testing in 329 IAC 9-7-4(3) and 329 IAC 9-7-5(2) to determine whether a leak exists in that portion of the tank that routinely contains product or the attached delivery piping, or both. The owner and operator shall complete one (1) of the following:

(A) The owner and operator shall repair, replace, or upgrade the UST system and begin corrective action in accordance with 329 IAC 9-5 if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate

that a leak exists and if ~~environmental contamination is~~ **contaminants are** not present.

(C) The owner and operator shall conduct a site check as described in subdivision (2) if the test results for the system, tank, and delivery piping do not indicate that a leak exists, but ~~environmental contamination is~~ **contaminants are** present.

(2) The owner and operator shall measure for the presence of a release where ~~contamination~~ **the contaminant** is most likely to be present at the underground storage tank site. In selecting sample types, sample locations, and measurement methods, the owner and operator shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence and source of the release. The owner and operator shall complete one (1) of the following:

(A) If the test results for the excavation zone or the underground storage tank site indicate that a release has occurred, the owner and operator shall begin corrective action in accordance with 329 IAC 9-5.

(B) If the test results for the excavation zone or the underground storage tank site do not indicate that a release has occurred, further investigation is not required.

(Solid Waste Management Board; 329 IAC 9-4-3; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1070; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3706; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 28. 329 IAC 9-4-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-4-4 Reporting and cleanup of spills and overfills

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 4. (a) The owner and operator of ~~a an~~ UST system shall contain and immediately clean up a spill or overflow, report ~~the incident~~ **the agency emergency response twenty-four (24) hour spill hotline at (888) 233-7745 in Indiana or (317) 233-7745 as soon as possible but** within twenty-four (24) hours, and begin corrective action in accordance with 329 IAC 9-5 in the following cases:

(1) Spill or overflow of petroleum that results in a release to the environment that:

(A) equals or exceeds twenty-five (25) gallons; or
(B) causes a sheen on nearby surface water.

(2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under 40 CFR 302.4, **revised 2000**. The Code of Federal Regulations is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(b) The owner and operator of ~~a an~~ UST system shall contain and immediately remove any contaminated media when one (1)

of the following occur:

- (1) Spill or overfill of petroleum that is less than twenty-five (25) gallons.
- (2) Spill or overfill of a hazardous substance that is less than the reportable quantity under 40 CFR 302.4, **revised 2000**. The Code of Federal Regulations is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

If the removal of any contaminated media cannot be accomplished within twenty-four (24) hours, the owner and operator shall immediately notify the agency. (*Solid Waste Management Board; 329 IAC 9-4-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1070; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3707; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 29. 329 IAC 9-5-1 IS AMENDED TO READ AS FOLLOWS:

Rule 5. Initial Response, Site Investigation, and Corrective Action

329 IAC 9-5-1 Applicability for release response and corrective action

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-12-3-2; IC 13-23

Sec. 1. (a) An owner and operator of a petroleum or hazardous substance UST system shall, in response to a confirmed release from the UST system, comply with the requirements of this rule **except for unless the UST systems system is** excluded under 329 IAC 9-1-1(b) **and or the UST systems system is** subject to corrective action requirements under Section 3004(u) (42 U.S.C. 6924(u)) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996.

(b) The owner and operator shall conduct corrective action that meets the following requirements:

- (1) The corrective action plan is in the following format:
 - (A) Executive summary; including the following:
 - (i) A briefing about the site in narrative form, highlighting events regarding the need for corrective action.
 - (ii) Other information regarding the need for corrective action.
 - (B) A narrative concerning contaminant and site conditions, including the following:
 - (i) Contaminant identification including chemical and physical properties.
 - (ii) Contaminant toxicological data.
 - (iii) Potential effects of residual contamination.
 - (iv) Site specific soil and hydrogeologic characteristics.
 - (v) Proximity of local surface waters and ground water and associated water quality data.
 - (vi) Current and potential future uses of local water sources.

- (vii) A summary of site specific water quality data generated during previously completed site investigations.
- (viii) Other information necessary to describe site conditions.

(C) Health and safety plan; including the following:

- (i) Known hazards and risk evaluation associated with site activities.
- (ii) List of personnel; alternates to personnel; and areas of responsibilities of personnel.
- (iii) Levels of personal protection for personnel.
- (iv) Decontamination equipment and procedures.
- (v) Site access control measures.
- (vi) Site emergency procedures; medical care availability; and a route by roadway to health care facilities.
- (vii) List of emergency phone numbers that includes the fire department; the police department; a local ambulance; and the local hospital or medical facility.
- (viii) List of personnel's training; qualifications; and certifications.
- (ix) A description of how the plan will meet health and safety requirements.

(D) An appropriately scaled regional map that can be reproduced from previously submitted and approved site investigation reports but must include the following:

- (i) Illustrated legends and compass directions.
- (ii) A legible; topographic base with ten (10) foot contour intervals.
- (iii) Location and depth of any wells that have a capacity greater than seventy (70) gallons per minute within a two (2) mile radius of the site.
- (iv) Location and depth of any wells that have a capacity of less than seventy (70) gallons per minute within a one (1) mile radius of the site.
- (v) Identification of facilities and land for agricultural; residential; commercial; and industrial use within a one (1) mile radius of the site.
- (vi) Locations of surface water within a one (1) mile radius of the site.
- (vii) Site location.

(E) Appropriately scaled site maps that can be reproduced from previously submitted and approved site investigation reports but must include the following:

- (i) Illustrated legends and compass directions.
- (ii) Topographic base with appropriate contour intervals to accurately describe the site.
- (iii) Identified above ground features; including buildings; roadways; manways; pump islands; and property lines.
- (iv) Identified subsurface features; including tanks; piping; and utility conduits.
- (v) Soil boring and monitoring well locations surveyed to one-hundredth (1/100) foot accuracy from an on-site temporary benchmark.
- (vi) Both field and laboratory sampling locations; depth of sample taken; and the contaminant concentration results.

- (vii) Contaminant plume delineation.
- (viii) Ground water flow direction.
- (ix) The location of remediation equipment shown, to scale.
- (F) Geologic and hydrogeologic maps that describe subsurface features and contaminant plume identification and include the following:
 - (i) Cross sections.
 - (ii) Fence diagrams.
 - (iii) Geophysical profile or geophysical maps, or both, if available.
- (G) A narrative on selected remediation technology that includes the following:
 - (i) Feasibility studies showing the effectiveness of the selected remediated technology.
 - (ii) A detailed description of the selected technology, design explanations, and illustrations.
 - (iii) Projected contaminant removal or treatment rates, or both.
 - (iv) Technical specifications of equipment and the process.
- (H) Sampling and analysis plan to evaluate the performance of the remediation technology that includes the following:
 - (i) A minimum of quarterly samples taken and reported.
 - (ii) The following as applicable:
 - (AA) Field investigation procedures.
 - (BB) Field screen samples.
 - (CC) Laboratory procedures for checking sample validity, sample acquisition, container, preservation, shipping requirements, storage time, chain of custody, and decontamination of equipment between samples.
 - (DD) Provisions for retention of laboratory quality assurance and quality control information.
 - (EE) Documentation that the sampling and analysis will 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), H (September 1994), HA (August 1993), HB (January 1995), and HI (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
 - (FF) Provisions for submission of reports that must include a signed laboratory certificate of analysis that lists analysis method, method preparation, date of sample receipt, date of analysis, a statement that the method quality assurance and quality control procedures were followed, the chain of custody documentation, including laboratory receipts, decontamination procedures, and sampling procedures and techniques.
- (I) Timetable that includes the following shown on a Gantt chart:
 - (i) Installation and implementation dates.
 - (ii) Sampling events.
 - (iii) Progress milestones.

- (iv) Completion dates.
 - (J) Provisions for progress reports to be submitted that include the following:
 - (i) Brief narrative of the remediation process.
 - (ii) Documentation and data graphically demonstrating remediation effectiveness.
 - (iii) Quarterly sampling results.
 - (K) Provisions for a final report that includes:
 - (i) documentation that the clean-up goals and objectives have been achieved; and
 - (ii) a signature by either a professional engineer, professional geologist, hydrologist, or certified hazardous materials manager.
 - (2) The soil clean-up objectives must be determined and met by complying with IC 13-12-3-2.
 - (3) The ground water clean-up objectives must be determined and met by complying with IC 13-12-3-2.
 - (c) The owner and operator may conduct another method of corrective action that is:
 - (1) as protective of human health and the environment as that provided in subsection (b); and
 - (2) approved by the commissioner.
- (Solid Waste Management Board; 329 IAC 9-5-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1071; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3707; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 30. 329 IAC 9-5-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-5-2 Initial response

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
 Affected: IC 13-23

Sec. 2. Upon confirmation of a release in accordance with 329 IAC 9-4-3 or after a release from the UST system is identified in any other manner, the owner and operator shall perform the following initial response actions within twenty-four (24) hours of a release:

- (1) Report the release to the agency:
 - (A) by telephone at (317) 232-8900 or after hours or holidays at (317) 233-7745;
 - (B) by fax at (317) 234-0428; or
 - (C) at LeakingUST@dem.state.in.us for electronic mail.
- (2) Take immediate action to prevent any further release of the regulated substance into the environment.
- (3) Identify and mitigate fire, explosion, and vapor hazards.
- (4) Mitigate to the extent practicable adverse effects to human health and the environment.

(Solid Waste Management Board; 329 IAC 9-5-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1071; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3709; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 31. 329 IAC 9-5-3.2 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-5-3.2 Initial abatement measures and site check

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 3.2. (a) The owner and operator shall perform the following abatement measures:

- (1) Remove as much of the regulated substance from the UST system as necessary to prevent further release to the environment.
- (2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water.
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank excavation zone and entered into subsurface structures, which may include:
 - (A) storm sewers;
 - (B) sanitary sewers;
 - (C) utility lines;
 - (D) inhabitable buildings with a basement or crawl-space; or
 - (E) underground conduits.
- (4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator shall comply with applicable state and local requirements.
- (5) Measure for the presence of a release where the contaminant is most likely to be present at the underground storage tank site unless the presence and source of the release have been confirmed in accordance with the site check required by 329 IAC 9-4-3(2) or the closure site assessment of 329 IAC 9-6-2.5. In selecting sample types, sample locations, and measurement methods, the owner and operator shall consider the nature of the stored substance, the type of backfill, depth to ground water, and other factors as appropriate for identifying the presence and source of the release.
- (6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with section 4.2 of this rule.

(b) If:

- (1) drinking water is affected;
- (2) free product is present; or
- (3) vapors are present in:
 - (A) storm sewers;
 - (B) sanitary sewers;
 - (C) utility lines;
 - (D) inhabitable buildings with a basement or crawl-space; or

(E) underground conduits;

within twenty (20) days after release confirmation, the owner and operator shall submit a report to the agency summarizing the initial abatement measures taken under subsection (a) and any resulting information or data. (*Solid Waste Management Board; 329 IAC 9-5-3.2*)

SECTION 32. 329 IAC 9-5-4.2 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-5-4.2 Free product removal

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 4.2. At sites where investigations indicate the presence of free product, the owner and operator shall remove free product to the maximum extent practicable as determined by the commissioner based on free product removal technology and site conditions while continuing, as necessary, any actions initiated under sections 2, 3.2, and 5.1 of this rule, or preparation for actions required under sections 6 and 7 of this rule. In meeting the requirements of this section, the owner and operator shall do the following:

- (1) Conduct free product removal in a manner that:
 - (A) minimizes the spread of the contaminant into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site; and
 - (B) properly treats, discharges, or disposes of recovery products and byproducts in compliance with applicable local, state, and federal regulations.
- (2) Use abatement of free product migration as a minimum objective for the design of the free product removal system.
- (3) Handle any flammable products in a manner so as to prevent fires or explosions in accordance with the site health and safety plan as required by section 7(e) of this rule.
- (4) Unless directed to do otherwise by the commissioner, prepare and submit to the agency, within forty-five (45) days after confirming a release, a free product removal report that provides at least the following information:
 - (A) The name of the person responsible for directing the free product removal measures.
 - (B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations.
 - (C) The type of free product recovery system used.
 - (D) Whether any discharge of free product will take place on-site or off-site during the recovery operation and where this discharge will be located.
 - (E) The type of treatment applied to, and the effluent quality expected from, any discharge.
 - (F) The steps that have been, or are being taken, to obtain necessary permits for any discharge.
 - (G) The disposition of the recovered free product.

(Solid Waste Management Board; 329 IAC 9-5-4.2)

SECTION 33. 329 IAC 9-5-5.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-5-5.1 Initial site characterization

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-12-3-2; IC 13-23; IC 25-17.6; IC 25-31-1; IC 25-31.5-4

Sec. 5.1. (a) **In conformance with IC 13-12-3-2**, the owner and operator shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial **response and** abatement measures in sections 2 and ~~4.1~~ **3.2** of this rule. This information must include **a title page that identifies the consultant performing the work, the date the report was prepared, and** the following:

- (1) Data on the nature, **site-specific location**, and estimated quantity of release.
- (2) Data from available sources or site investigations, or both, concerning the following factors:
 - (A) Surrounding populations.
 - (B) **Surface and ground** water quality.
 - (C) Use and approximate locations of all wells ~~within:~~
 - (i) ~~a one (1) mile radius for ground water wells for background;~~
 - (ii) ~~a two (2) mile radius for municipal water supply wells for investigations;~~
 - (iii) ~~a two (2) mile radius for wells with a capacity greater than seventy (70) gallons per minute for investigation; and~~
 - (iv) ~~a one (1) mile radius for wells with a capacity less than seventy (70) gallons per minute for investigation.~~**potentially affected by the release but at a minimum include those wells specified in subsection (b)(2)(E)(v)(CC) and (b)(2)(E)(v)(DD).**
 - (D) Subsurface soil conditions.
 - (E) Locations of
 - (i) ~~storm sewers;~~
 - (ii) ~~sanitary sewers;~~
 - (iii) ~~utility lines; and~~
 - (iv) ~~french drains.~~**on-site and adjacent subsurface features.**
 - (F) Climatological conditions.
 - (G) Land use.
- (3) Results of the site check required under section ~~4.1(a)(5)~~ **3.2(a)(5)** of this rule.
- (4) Results of the free product investigations required under section ~~4.1(a)(6)~~ **3.2(a)(6)** of this rule, to be used by the owner and operator to determine whether free product must be recovered under section ~~3.1~~ **4.2** of this rule.
- (5) Known or expected extent of ~~contamination: the contaminant or contaminants.~~
- (6) Information requested by the commissioner.

(b) Within ~~forty-five (45)~~ **sixty (60)** days of release confirmation, the owner and operator shall submit the information collected under subsection (a) to the agency as follows:

- (1) In a manner that demonstrates the applicability and technical adequacy of the information.
- (2) In a format as ~~follows:~~ **required by the agency that includes the following information:**
 - (A) Background, including the following:
 - (i) The owner's and operator's name and address.
 - (ii) Past owners' and operators' names and addresses.
 - (iii) The facility name, address, and telephone number.
 - (iv) All prior and present operations of the facility.
 - (v) Prior construction activities.
 - (vi) List of prior spills at the facility.
 - (vii) Site proximity to sensitive areas, such as:
 - (AA) residences;**
 - (BB) schools; and**
 - (CC) wells;**
 - (DD) well fields; or**
 - (EE) wellhead protection areas;****delineated under rules of the water pollution control board at 327 IAC 8-4.1.**
 - (viii) Subsurface soil descriptions.
 - (ix) ~~Location of~~ **Information known about** all ground water wells within a one (1) mile radius of the facility.
 - (x) Description of all site work completed **and the date the site work was completed.**
 - (xi) Number and volume of underground storage tank or tanks.
 - (xii) Underground storage tank construction material and type of leak detection.
 - (xiii) Past and present contents of each underground storage tank.
 - (xiv) Records of most recent tightness test results, inventory records, and underground storage tank gaging records for the prior calendar year.
 - (xv) Underground storage tank age and date of installation.
 - (xvi) Underground storage tank system closure report submittal date, if applicable.
 - (B) Release incident description, including the following:
 - (i) Date reported to the ~~department:~~ **agency.**
 - (ii) Release incident number given by the ~~department~~ **agency** at the initial report.
 - (iii) Assigned ~~departmental~~ **agency** site priority ranking obtained at the initial report.
 - (iv) List of material or materials released.
 - (v) List of volume lost.
 - (vi) List of areas affected, such as the:
 - (AA) soil;**
 - (BB) ground water;**
 - (CC) surface water features; or sewers;**
 - (DD) subsurface conduits.**
 - (vii) Health and environmental risks associated with the

- spill incident.
- (C) Initial response and abatement information, including the following:
- (i) **A** detailed description of immediate actions **taken** to **prevent** any further release.
 - (ii) Measures taken to prevent further migration of the spill.
 - (iii) Actions taken to identify and mitigate fire and explosion hazards posed by vapors or free product.
 - (iv) Actions **taken** to investigate free product release.
- (D) Free product recovery information, including the following:
- (i) **The** name of **the** person or persons responsible for product removal.
 - (ii) Estimated quantity, type, and thickness of product observed or discovered.
 - (iii) A description of the recovery system.
 - (iv) Copies of all permits from local, state, and federal agencies necessary for:
 - (AA) handling;
 - (BB) treating;
 - (CC) discharging; and
 - (DD) disposing of;
 the contaminants.
 - (v) Final disposition of the recovered free product **and associated documentation.**
- (E) Investigation information, including the following:
- (i) Types of bedrock.
 - (ii) Soil series description.
 - (iii) List of regional soil and geologic references used.
 - (iv) Regional hydrogeological references used.
 - (v) Appropriately scaled regional maps with the following:
 - (AA) Illustrated legends, **scale**, and compass direction.
 - (BB) Topographic base with ten (10) foot contour intervals.
 - (CC) Location, depth, and corresponding department of natural resources' well records **of for** wells **with located within a two (2) mile radius of the site that have a capacity of over seventy (70) gallons per minute and or that are** municipal water supply wells. **within a two (2) mile radius of the site.**
 - (DD) Location, depth, and corresponding department of natural resources' well records **of for** wells with a capacity of less **that than** seventy (70) gallons per minute within a one (1) mile radius of the site.
 - (EE) Identification of facilities and land for agricultural, industrial, and commercial use within one (1) mile radius of the site.
 - (FF) Locations of surface water **features** within a one (1) mile radius of the site.
 - (vi) Site-specific geologic information as follows:
 - (AA) A minimum of three (3) on-site, continuously sampled soil borings.

- (BB) Soil ~~borings~~, **boring locations**, accurately field surveyed with a horizontal closure of less than one (1) foot error. ~~placed as needed to confirm the extent of soil contamination.~~
 - (CC) Site soil stratigraphy identification, including cross sections.
 - (DD) Soil boring logs that ~~give lithologic descriptions, degree of sorting, sedimentary contacts, gas readings, and vapor readings.~~ **include the method of drilling, total depth of boring, type and thickness of formations or materials encountered, including color, hardness, and a geological description, soil vapor readings, name and address of drilling company, name and license number of drilling operator, and signature of licensed driller or environmental professional who logged the boring.**
 - (EE) Soil boring logs with the same vertical scale and including surface elevations.
- (vii) Hydrogeologic information, including the following:
- (AA) Depth to ground water ~~with seasonal fluctuations determined by at least quarterly measured in a piezometer or monitoring events.~~ **well.**
 - (BB) **Ground water** flow directions and gradients.
 - ~~(CC) Hydraulic conductivity, transmissivity, storativity, confined or unconfined condition, porosity, and average linear velocity of the aquifer or aquifers involved.~~
 - ~~(DD)~~ (CC) A minimum of three (3) ~~monitoring wells screened across water table fluctuation and not placed in a straight line.~~ **ground water samples collected from locations most likely to be contaminated and a description of the method of sample collection.**
 - ~~(EE)~~ (DD) A minimum of three (3) monitoring wells ~~placed as needed to confirm extent of or piezometers must be screened across water table fluctuation and not placed in a straight line. Monitoring wells must be installed, when time series ground water contamination.~~ **quality monitoring is required.**
 - ~~(FF)~~ (EE) Monitoring well **and piezometer** location surveyed to a temporary benchmark with a vertical accuracy of one-hundredth (.01) foot and with a horizontal closure of less than one (1) foot.
 - ~~(GG)~~ (FF) **Monitoring well or piezometer** construction records submitted with the same scale that includes **ground surface and the top of the well casing elevations, casing size and materials, well screen length, slot size, depth to the top and bottom of screen, method of drilling or well installation, borehole size, name and address of drilling company, name and license number of the equipment operator, type, depth, and thickness of grouting materials, method of installation, and signature of licensed driller.**
 - (GG) Monitoring well or piezometer stratigraphic logs that meet the requirements of rules of the natural resources commission at 312 IAC 13, and

include method of drilling, total depth of boring, type and thickness of formations or materials encountered, including color, hardness, and a geological description, soil vapor readings, borehole diameter, well diameter, name and address of drilling company, name and license number of drilling operator, and signature of licensed driller or environmental professional who logged the well or piezometer boring.

(viii) Contamination plume identification and maps, appropriately scaled, that include the following:

~~(AA) The horizontal and vertical extent of contamination must be defined.~~

~~(BB)~~ (AA) Illustrated legends, **scale**, and compass directions.

~~(CC)~~ (BB) Topographic base with appropriate contour intervals to accurately describe the site.

~~(DD)~~ (CC) Identification of aboveground features, including buildings, roadways, manways, pump islands, and property lines.

~~(EE)~~ (DD) Identification of subsurface features, including tanks, piping, and utility conduits, **storm sewers, sanitary sewers, utility lines, and french drains.**

~~(FF)~~ (EE) Soil borings and monitoring well locations surveyed to a temporary benchmark with ~~an~~ **a horizontal closure accuracy of one (1) foot, and monitoring well locations surveyed with a vertical accuracy of one-hundredth (.01) foot.**

~~(GG) Both field and laboratory~~ (FF) Sampling locations, depth of sample taken, and the contaminant concentration results.

~~(HH)~~ (GG) Horizontal and vertical contaminant plume identification.

~~(II)~~ (HH) Geologic cross sections showing the water table and illustrating **the vertical extent of the** contaminant plume. ~~identification.~~

~~(JJ)~~ (II) Ground water flow directions.

(F) Sampling information, including the following:

(i) Field investigation procedures.

(ii) Field screen samples.

(iii) Laboratory procedures that include:

(AA) checking sample validity;

(BB) sample acquisition;

(CC) container;

(DD) preservation;

(EE) shipping requirements;

(FF) storage time;

(GG) chain of custody; and

(HH) decontamination of equipment between samples.

(iv) Provisions for retention of laboratory quality assurance and quality control information, so that the information may be made available to representatives of the **department agency** upon request.

(v) Documentation, ~~that in a format prescribed by the commissioner, of~~ the sampling and analysis conducted. was 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); H (September 1994); HA (August 1993); HB (January 1995); and HI (December 1996). Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(vi) A report, **in a format prescribed by the commissioner**, that includes a signed laboratory certificate of analysis that lists:

(AA) analysis method;

(BB) method preparation;

(CC) date of sample receipt;

(DD) date of analysis;

(EE) a statement that the method quality assurance and quality control procedures were followed;

(FF) the chain of custody documentation, including laboratory receipts, decontamination procedures, and sampling procedures and techniques.

(vii) Analytical methods and corresponding detection limits. ~~in the tables at 329 IAC 9-1-10.2.~~

(G) Results and conclusions that include the following:

(i) A discussion of the results of the site investigation.

(ii) Field and laboratory sample results in a tabular format.

(H) Recommendations that include ~~the following~~:

~~(i) Feasibility studies.~~

~~(ii) a discussion of effective remediation alternatives, including the following for each alternative:~~

~~(AA) Overall effectiveness of technology.~~

~~(BB) Ability to achieve clean-up criteria.~~

~~(CC) Expected treatment duration.~~

~~(DD) Treatment reliability.~~

~~(EE) Permits that will be required.~~

the need for further site investigations under section 6 of this rule to determine the nature and extent of the contaminants.

(3) In a report that is signed by ~~an environmental professional that may include: a:~~

(A) registered professional engineer under IC 25-31-1;

(B) ~~certified~~ **licensed** professional geologist under IC 25-17.6; ~~or~~

(C) certified hazardous materials manager (CHMM) **as certified by the Institute of Hazardous Material Management; or**

(D) **professional soil scientist registered under IC 25-31.5-4.**

(c) The commissioner may approve an alternative procedure for initial site characterization only if the procedure provides substantially equal protection for human health and the environ-

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ment as the initial site characterization in subsections (a) and (b) **and is in the format as described in subsection (b)(2) and (b)(3).** (*Solid Waste Management Board; 329 IAC 9-5-5.1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3710; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 34. 329 IAC 9-5-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-5-6 Further site investigations for soil and ground water cleanup

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-12-3-2; IC 13-23

Sec. 6. (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product ~~contamination as a contaminant~~ of the ground water, the owner and operator shall conduct ~~investigations a further site investigation~~ of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(1) **Information collected and submitted under section 5.1 of this rule is incomplete or fails to define the nature and extent of contamination in the soil and ground water.**

~~(1) (2)~~ There is evidence that ground water wells have been affected by the ~~release~~ **contaminant**. This evidence may include any ~~found information collected~~ during release confirmation or previous corrective action measures.

~~(2) (3)~~ Free product is found to need recovery in compliance with section ~~3-4~~ **4.2** of this rule.

~~(3) (4)~~ There is evidence that contaminated soils may be in contact with ground water. This evidence may include any ~~found information collected~~ while conducting the initial response measures or investigations required under sections 1, ~~through 2~~, **3.1, 4.1, and 5.1** of this rule.

~~(4) (5)~~ The commissioner requests ~~an a further site~~ investigation based on the potential effects of contaminated soil or ground water on nearby surface water and ground water resources.

(b) **During the further site investigation the owner or operator must do the following if evidence exists that a contaminant exceeds the cleanup objectives under IC 13-12-3-2:**

(1) **Install a minimum of three (3) ground water monitoring wells, if at least three (3) wells were not installed during the initial site investigation under section 5.1 of this rule. Additional monitoring wells may be required to fully define the extent of contamination.**

(2) **Take a ground water sample from each of the monitoring wells and report the analytical results to the agency.**

(3) **Provide a description of the method for collecting the ground water samples.**

(4) **Monitoring wells must be screened across water table fluctuation and not placed in a straight line.**

(5) **Monitoring wells must be installed as per the requirement of the rule of the natural resources commission at 312 IAC 13-8-3.**

~~(b) (c)~~ The owner and operator shall submit the information collected under subsection ~~(a)~~ **(b)** as soon as practicable or in accordance with a schedule established by the commissioner **in the format described in section 5.1(b)(2) and 5.1(b)(3) or 5.1(c) of this rule as well as a title page that identifies the consultant performing the work, the date the report was prepared and the following information:**

(1) **Hydraulic conductivity.**

(2) **Transmissivity.**

(3) **Storativity.**

(4) **Confined or unconfined condition.**

(5) **Porosity of the aquifer or aquifers involved.**

(6) **The average linear velocity of the ground water in the aquifer or aquifers involved.**

(d) **Provide a complete discussion of effective remediation alternatives, including the following for each alternative:**

(1) **Overall effectiveness of technology.**

(2) **Ability to achieve cleanup criteria.**

(3) **Expected treatment duration.**

(4) **Treatment reliability.**

(5) **Permits that will be required.**

(e) **The approval of a further site investigation or initial site characterization under section 5.1 of this rule is not a determination that the actual costs incurred performing these site characterization activities are reimbursable costs under the rules of the underground storage tank financial assurance board at 328 IAC 1.** (*Solid Waste Management Board; 329 IAC 9-5-6; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1072; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3712; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 35. 329 IAC 9-5-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-5-7 Corrective action plan

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-12-3-2; IC 13-23-8-4; IC 25-17.6; IC 25-31-1; IC 25-31.5-4

Sec. 7. (a) At any point after reviewing the information submitted in compliance with sections 1, 2, ~~4-1~~, **3.2**, and 5.1 of this rule, the commissioner may require the owner and operator to:

(1) submit additional information; or

(2) develop and submit a corrective action plan for responding to contaminated soils and ground water.

If a plan is required, the owner and operator shall submit the plan according to a schedule established by the commissioner and the format designated under ~~section 1(b)(1) of this rule.~~

subsection (f). Alternatively, the owner and operator may, after fulfilling the requirements of sections 2, ~~4.1~~, **3.2**, and 5.1 of this rule, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, the owner and operator are responsible for submitting a plan that provides for adequate protection of human health and the environment, as determined by the commissioner, and shall modify their plan as necessary to meet this standard. ~~The corrective action plan may be automatically deemed approved under subsection (f).~~

(b) The commissioner will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the commissioner shall consider the following factors, as appropriate:

- (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration.
- (2) The hydrogeologic characteristics of the facility and the surrounding area.
- (3) The proximity, quality, and current and future uses of nearby surface water and ground water.
- (4) The potential effects of ~~a residual contamination~~ **contaminant** on nearby surface water and ground water.
- (5) **The proximity of potential contaminant receptors, including:**
 - (A) adjacent residences;
 - (B) wells;
 - (C) well fields; or
 - (D) wellhead protection areas delineated under rules of the water pollution control board at 327 IAC 8-4.1.

~~(5)~~ (6) An exposure assessment.

~~(6)~~ (7) Any information assembled in compliance with this rule.

~~(7)~~ (8) The suitability of the chosen remediation method for site conditions.

(c) Upon approval of the corrective action plan or as directed by the commissioner, the owner and operator shall implement the plan, including modifications to the plan made by the commissioner. The owner and operator shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the commissioner. **During implementation of the corrective action plan the commissioner may find that the approved corrective action plan will not achieve or is not achieving the cleanup objectives. Upon making this finding:**

- (1) the commissioner will notify the owner and operator that approval of the corrective action plan is suspended pending modification;
- (2) the basis of the finding shall also be provided to the owner or operator;
- (3) the owner or operator shall submit a modified plan to the commissioner for approval under subsection (b) before corrective action plan approval is reinstated;

(4) a reinstated corrective action plan approval is subject to all the provisions of this subsection; and

(5) the approval of a corrective action plan under this subsection is not a determination that the actual costs incurred performing the corrective action plan are reimbursable costs under the rules of the underground storage tank financial assurance board at 328 IAC 1.

(d) The owner and operator may, in the interest of minimizing ~~environmental contamination~~ **the effect of a contaminant** and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that the owner and operator:

- (1) notify the agency of their intention to begin cleanup;
- (2) comply with any conditions imposed by the commissioner, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- (3) incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the commissioner for approval.

(e) During corrective action, the owner and operator and their designees shall adhere to a written health and safety plan that meets all applicable requirements of the occupational safety standards commission and the rules of the fire prevention and building safety commission ~~675 IAC 22-2.2~~: **at 675 IAC 22.**

~~(f) If requirements are satisfied under IC 13-23-8-4(a)(5)(A) and IC 13-23-8-4(a)(5)(B), the corrective action plan is automatically deemed approved under IC 13-23-8-4(a)(5).~~

(f) The owner and operator shall conduct corrective action that meets the following requirements:

(1) The corrective action plan must be presented in a format prescribed by the commissioner and contain the following information:

- (A) A title page that identifies the consultant performing the work and the date the report was prepared.
- (B) An executive summary, including the following:
 - (i) A briefing about the site in narrative form, highlighting events leading to the need for corrective action.
 - (ii) Other information regarding the need for corrective action.

(C) A narrative concerning contaminant and site conditions, including the following:

- (i) Contaminant identification including chemical and physical properties.
- (ii) Determination of chemical reference doses (RfDs), cancer slope factors (Sfs or CPFs), reference ingestion factors, and maximum contaminant levels.
- (iii) Potential effects of residual contaminants.
- (iv) Site-specific soil and hydrogeologic characteristics.
- (v) Proximity of local surface waters and ground

water and associated water quality data.

(vi) Current and potential future uses of local water sources.

(vii) A summary of site specific water quality data generated during previously completed site investigations.

(viii) Other information necessary to describe site conditions.

(D) Health and safety plan for corrective action activities, including the following:

(i) Known hazards and risk evaluation associated with site activities.

(ii) A list of personnel, alternates to personnel, and areas of responsibilities of personnel.

(iii) Levels of personal protection for personnel.

(iv) Decontamination equipment and procedures.

(v) Site access control measures.

(vi) Site emergency procedures, medical care availability, and a route by roadway to at least one (1) health care facility.

(vii) A list of emergency phone numbers that includes:

(AA) the fire department;

(BB) the police department;

(CC) a local ambulance; and

(DD) the local hospital or medical facility.

(viii) A list of personnel training, qualifications, and certifications.

(ix) A description of how the plan will meet health and safety requirements of the Indiana occupational health and safety standards and the rules of the fire prevention and building safety commission at 675 IAC 22.

(E) An appropriately scaled regional map that can be reproduced from previously submitted and approved site investigation reports but that must include the following:

(i) Illustrated legends, scales, and compass directions.

(ii) A legible, topographic base with ten (10) foot contour intervals.

(iii) The location and depth of any wells that have a capacity:

(AA) greater than seventy (70) gallons per minute within a two (2) mile radius of the site; or

(BB) less than seventy (70) gallons per minute within a one (1) mile radius of the site.

(iv) Identification of facilities and land for:

(AA) agricultural;

(BB) residential;

(CC) commercial; and

(DD) industrial;

use within a one (1) mile radius of the site.

(v) Locations of surface water features within a one (1) mile radius of the site.

(vi) Site location.

(F) Appropriately scaled site maps that can be repro-

duced from previously submitted and approved site investigation reports that must include the following:

(i) Illustrated legends, scales, and compass directions.

(ii) Topographic base with appropriate contour intervals to accurately describe the site.

(iii) Identified aboveground features, including:

(AA) buildings;

(BB) roadways;

(CC) manways;

(DD) pump islands; and

(EE) property lines.

(iv) Identified subsurface features, including tanks, piping, and utility conduits.

(v) Soil boring and monitoring well locations surveyed with a horizontal closure of less than one (1) foot error.

(vi) Sampling locations, depth of sample taken, and the contaminant concentration results.

(vii) Soil and ground water contaminant plume delineation.

(viii) Ground water elevation contours and ground water flow direction.

(ix) The location of remediation equipment shown to scale.

(G) Geologic and hydrogeologic maps that describe subsurface features, identify the contaminant plume, and include the following:

(i) Cross sections.

(ii) Fence diagrams.

(iii) Geophysical profile or geophysical maps, or both, if available.

(H) A narrative on selected remediation technology that includes the following:

(i) Feasibility studies showing the effectiveness of the selected remediated technology.

(ii) A detailed description of the selected technology, design explanations, and illustrations.

(iii) Projected contaminant removal or treatment rates, or both.

(iv) Technical specifications of equipment and the process.

(v) Discussion of disposal or fate of treated air, soil, and ground water, and permit or discharge requirements.

(I) Sampling and analysis plan to evaluate the performance of the remediation technology that includes the following:

(i) A minimum of quarterly samples taken and reported.

(ii) The following as applicable:

(AA) Field investigation procedures.

(BB) Documentation, in a format prescribed by the commissioner, of the sampling, quality assurance measures, and analysis.

(CC) Field screen samples.

(DD) Sampling methods and laboratory procedures conducted in a manner that will generate scientifically valid data.

(EE) Provisions for retention of laboratory quality assurance and quality control information.

(FF) Provisions for submission of reports that must include a signed laboratory certificate of analysis that lists analysis method, method preparation, date of sample receipt, date of analysis, a statement that the method quality assurance and quality control procedures were followed, the chain of custody documentation, including laboratory receipts, and laboratory decontamination procedures.

(J) A timetable that includes the following shown on a bar chart:

- (i) Installation and implementation dates.
- (ii) Sampling events.
- (iii) Progress milestones.
- (iv) Completion dates.

(K) The corrective action plan must be signed by an environmental professional that is one (1) of the following:

- (i) A registered professional engineer under IC 25-31-1.
- (ii) A licensed professional geologist under IC 25-17-6.
- (iii) A certified hazardous materials manager (CHMM) as certified by the Institute of Hazardous Material Management.
- (iv) A professional soil scientist registered under IC 25-31.5-4.

(L) Provisions for progress reports to be submitted quarterly in a format prescribed by the commissioner that include the following:

- (i) A brief narrative of the remediation process.
- (ii) Documentation and data graphically demonstrating remediation effectiveness.
- (iii) Quarterly sampling results presented in a tabular format as prescribed by the commissioner with all previous sample data, if previous samples were taken.
- (iv) Quarterly ground water elevation gauging results presented in a tabular format, as prescribed by the commissioner, showing the following:

- (AA) Wellhead or measuring point elevation.
- (BB) Depth to ground water.
- (CC) Ground water elevation.

(v) Updated site maps showing the following:

- (AA) Soil and ground water contaminant plume delineations.
- (BB) Ground water elevation contours.
- (CC) Ground water flow directions.

(vi) Signed by an environmental professional that is one (1) of the following:

- (AA) A registered professional engineer under IC 25-31-1.
- (BB) A licensed professional geologist under IC 25-17.6.

(CC) A certified hazardous materials manager (CHMM) as certified by the Institute of Hazardous Material Management.

(DD) A professional soil scientist registered under IC 25-31.5-4.

(vii) Discussion of remediation system function, days of operation, and explanation for any time periods remediation system does not operate, and repairs or maintenance performed or needed by the remediation system. This discussion must include volumes of air, soil, or ground water extracted and treated by the remediation system, and effluent stream sample results.

(M) Provisions for a final report that includes the following:

- (i) Documentation that the cleanup goals and objectives have been achieved.
- (ii) A signature by an environmental professional that is one (1) of the following:

(AA) A registered professional engineer under IC 25-31-1.

(BB) A licensed professional geologist under IC 25-17.6.

(CC) A certified hazardous materials manager (CHMM) as certified by the Institute of Hazardous Material Management.

(DD) A professional soil scientist registered under IC 25-31.5-4.

(2) The soil cleanup objectives must be determined and met by complying with IC 13-12-3-2.

(3) The ground water cleanup objectives must be determined and met by complying with IC 13-12-3-2.

(Solid Waste Management Board; 329 IAC 9-5-7; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1072; errata, 16 IR 1955; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3713; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 36. 329 IAC 9-6-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-6-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 1. (a) At least thirty (30) days before beginning either permanent closure or a change-in-service, the owner and operator shall notify the agency of their intent to permanently close or make the change-in-service unless such action is in response to corrective action. The required assessment of the excavation zone under section 2 of this rule must be performed:

- (1) after notifying the agency; and
- (2) before completion of the permanent closure or change-in-service.

(b) Continued use of a UST system to store a nonregulated substance is considered a change-in-service. Before a change-

in-service, the owner and operator shall complete the following:

- (1) Empty and clean the tank by removing all liquid and accumulated sludge.
- (2) Conduct a site assessment in accordance with section 2 of this rule.

(c) To permanently close a tank, the owner and operator shall complete the following:

- (1) Empty and clean the tank by removing all liquids and accumulated sludges.
- (2) Complete either of the following:
 - (A) Remove the tank from the ground under section 2(a) or 2(b) of this rule.
 - (B) Fill the tank with an inert solid material under section 2(d) of this rule.

Closure of an UST system must be completed by one (1) of the following methods and the applicable requirements in section 2.5 of this rule:

- (1) In-place closure as defined at 329 IAC 9-1-27.3.
- (2) Removal closure as defined at 329 IAC 9-1-39.5.
- (3) Change-in-service as defined at 329 IAC 9-1-10.4.

(Solid Waste Management Board; 329 IAC 9-6-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1073; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3714; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 37. 329 IAC 9-6-2.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-6-2.5 Closure procedure

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-12-3-2; IC 13-23

Sec. 2.5. (a) The procedure for closure is as follows:

(1) At least thirty (30) days before beginning closure, the owner and operator shall notify, using the notification form required by 329 IAC 9-2-2(a), the agency and the office of the state fire marshal of the intent to close as specified by one (1) of the methods in section 1 of this rule unless such action is a part of the response to corrective action.

(2) Closure sampling and laboratory analysis with the associated detection limits for the UST system closure are required as follows:

(A) Quantity and location of soil samples for each closure method are as follows:

- (i) In-place closure soil samples must be taken as described in subsection (b).
- (ii) Removal closure soil samples must be taken as described in subsection (c).
- (iii) Change-in-service soil samples must be taken as described in subsection (d).

(B) Quantity and location of ground water samples for each closure method are as follows:

- (i) In-place closure ground water samples must be taken as described in subsection (e).
- (ii) Removal closure ground water samples must be

taken as described in subsection (f).

(iii) Change-in-service ground water samples must be taken as described in subsection (g).

(C) Laboratory analyses and detection limits for soil samples and ground water samples for all closure methods are as required for the chemical of concern.

(3) If, at any time during the closure process for any method of closure, a release is either suspected or detected in the backfill, native soil, or ground water, the owner or operator shall contact the agency to report within twenty-four (24) hours after the release is suspected or detected.

(4) A confirmed release based on the soil and ground water samples taken at the UST removal requires the owner or operator to contact the agency to report within twenty-four (24) hours after the release is confirmed if a leaking underground storage tank (LUST) incident number was not obtained under subdivision (3).

(5) A closure report must be completed and submitted to the agency within thirty (30) days after the UST removal. The closure report must include the following:

(A) The notification form provided by the agency under 329 IAC 9-2-2.

(B) The underground storage tank closure report. The closure report must include the following information:

(i) For the responsible party, the following information:

(AA) The UST system facility owner or operator name, agency's owner identification number, address, and phone number.

(BB) The name of the UST system facility contact person, owner or operator affiliation, and phone number.

(CC) Owners or operators during the last twenty-five (25) years.

(ii) For the UST contractor, the following information:

(AA) UST closure contractor, company name, and address.

(BB) The name of the person on-site during closure that is certified by the office of the state fire marshal to perform UST closure and that person's certification number.

(iii) For the UST site information regarding the following:

(AA) Facility name, agency's facility identification number, address, and phone number.

(BB) Type of facility, past and current operation.

(CC) Coverage, stating if coverage is turf, concrete, asphalt, or other.

(DD) History of any spill reports listed by incident number.

(EE) Site proximity to both human and environmentally sensitive areas, such as residences, schools, wells, well fields, or wellhead protection areas

delineated under rules of the water pollution control board at 327 IAC 8-4.1.

(FF) Backfill and site natural soil texture.

(iv) A site-specific map or maps with illustrated legends and compass directions and at appropriate scale to show site details described as follows:

(AA) Drainage features, surface slope, or surface water run-off direction.

(BB) Identified aboveground features, such as buildings, roadways, manways, pump islands, and utility and property lines.

(CC) Identified subsurface features, such as tanks and excavation pit, piping, and utility conduits.

(DD) Locations where samples were taken, soil borings made, and monitoring wells drilled.

(EE) Location of active and previously closed tanks, as applicable.

(FF) Site surroundings, such as adjacent buildings, businesses, or human and environmentally sensitive areas, such as residences, schools, wells, well fields, or wellhead protection areas delineated under rules of the water pollution control board at 327 IAC 8-4.1.

(v) Information for the underground storage tank being closed as follows:

(AA) The number and volume of tanks.

(BB) Past and present contents of the tank.

(CC) Construction material of tank.

(DD) Construction and material of piping.

(EE) Age and installation date of tank.

(FF) Leak detection methods used.

(GG) Records of the most current tank tightness test results.

(HH) Records of any other current leak detection method results including the inventory records, ground water, or vapor monitoring results.

(II) Information on any previously closed UST system, such as the date closed and the number, size, and product stored.

(vi) Physical and chemical results of the samples taken under subdivision (2) as follows:

(AA) Data from analysis of soil samples presented in a tabular format.

(BB) Data from analysis of water samples presented in a tabular format.

(CC) A signed laboratory certificate of analysis listing analysis method, preparation method, date of sample receipt, and date of analysis.

(DD) Proper sample identification numbers for cross-reference to UST site maps.

(EE) Chain of custody documentation.

(FF) Description of the sampling procedures, sampling equipment, and decontamination procedures.

(GG) Data from analyses of used oil sampling, as

applicable.

(vii) Miscellaneous closure documentation, including manifests or receipts, or both, as follows:

(AA) Contaminated soil and contaminated water disposal documentation.

(BB) Remaining product and sludge disposal documentation.

(CC) Tank and piping disposal documentation.

(6) If one (1) or more additional tanks are discovered during a closure, the owner and operator shall:

(A) close each additional tank under this rule; and

(B) supply all known information on each additional tank in the closure report.

(7) The commissioner shall require additional information if the closure report is deemed incomplete or incorrect. The commissioner shall provide in writing the reasons for requiring additional information and a list of the additional information required to be submitted. The owner and operator shall have forty-five (45) days to submit the additional information to the agency, after receipt of written notification from the commissioner that additional information is required.

(8) The closure will not be considered complete until all closure report requirements are met.

(9) If the underground storage tank contains hazardous substances, the owner and operator shall perform sampling and analyses as required for the chemical of concern.

(10) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal under rules of the fire prevention and building safety commission at 675 IAC 12-12.

(b) Soil sampling for in-place closure must be achieved as follows:

(1) The owner and operator shall submit a site plan with proposed boring locations to the agency with the notification form under 329 IAC 9-2-2 and to the office of the state fire marshal for approval to request in-place closure. The accompanying map must be to scale and include the entire site. Submission of an additional map of solely the underground storage area is recommended for large sites. The boring locations should be as follows:

(A) One (1) boring every twenty (20) feet around the tank area, with a minimum of four (4) borings.

(B) Each boring must be within three (3) feet adjacent to the underground storage tank.

(2) The commissioner may grant conditional approval to proceed with in-place closure of the UST system based on the following:

(A) The location of the borings as required under subdivision (1).

(B) Approval from the office of the state fire marshal.
(3) After approval is received under subdivision (2), the owner and operator may proceed with soil borings that must meet the following requirements:

(A) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology used.

(B) Borings must extend two (2) feet or greater below the elevation of the base of the underground storage tank.

(C) If the boring depth is fifteen (15) feet or less, a minimum of two (2) soil samples are required at the following locations:

(i) The point where a contaminant is detected.

(ii) One (1) soil sample must be taken at the:

(AA) midpoint; and

(BB) bottom;

of the boring.

(D) If the boring depth is greater than fifteen (15) feet, a minimum of three (3) soil samples are required. The most shallow soil sample must be taken one (1) foot or greater below grade. Samples must be taken where the release is suspected or detected.

(4) Piping and dispenser sampling and analysis must be completed under subsection (c)(3) or (c)(4).

(5) The waiver of closure sampling requirements under subsection (h) will not be granted for in-place closure.

(c) Soil sampling for removal closure must be achieved as follows:

(1) Soil removal is allowed as follows:

(A) The backfill may be removed from the following to provide access to native soil for sampling:

(i) Tank cavity excavation.

(ii) Piping trenches.

(iii) Dispensing unit areas.

(iv) Remote fill pipe trenches.

(B) Closure soil samples must be taken from the following:

(i) Excavated backfill under subdivision (2)(B).

(ii) Undisturbed native soil under subdivision (2)(A).

(2) Each underground storage tank excavation must be sampled separately. Composite samples are not acceptable for closure. The samples must meet the following requirements:

(A) All samples must be discrete grab samples taken directly from the undisturbed native soil from the base and sidewalls of the excavation. The following requirements apply to samples:

(i) Bottom samples must meet the following requirements:

(AA) Soil sampling must consist of a minimum of two (2) soil samples taken within two (2) feet below both ends of each underground storage tank.

(BB) If the underground storage tank capacity is

greater than ten thousand (10,000) gallons, one (1) additional sample must be taken within two (2) feet below the middle of the underground storage tank.

(ii) Sidewall samples must meet the following requirements:

(AA) The sidewalls must be sampled and analyzed at a rate of one (1) sample every twenty (20) feet of perimeter distance around the excavation zone.

(BB) If the perimeter dimension measures less than eighty (80) feet, a minimum of one (1) sample for each sidewall must be taken.

(CC) Sidewall samples must be taken at a point half the distance from the surface to the bottom of the underground storage tank excavation.

(B) Excavated materials must be staged in a separate area. Samples must be discrete grab samples taken directly from the excavated materials. Sampling of the excavated soil must occur for every fifty (50) cubic yards of material.

(3) Native soil under piping and dispenser islands, which routinely contains regulated substances, must be sampled. All samples must be discrete grab samples. The following requirements apply to the number and location of sampling for piping and dispensers:

(A) Soil sampling under piping must be completed as follows:

(i) Soil under piping must be sampled every twenty (20) feet, or fraction thereof, along the piping run. If the piping run is less than twenty (20) feet in length, one (1) soil sample must be taken half the distance between the underground storage tank excavation and the pump or dispenser island.

(ii) Piping must have soil sampled under piping elbows and connectors.

(B) Soils under the dispenser islands must be sampled and analyzed at a rate of one (1) soil sample per dispenser.

(C) If the UST system has a remote fill line, the following soil samples must be collected:

(i) Soils under the remote fill line must be sampled and analyzed at the origin or fill area and every twenty (20) feet, or fraction thereof, from the fill area to the underground storage tank connection.

(ii) If the remote fill line is less than twenty (20) feet, one (1) soil sample must be taken half the distance between the fill area and the underground storage tank.

(D) Composite samples are not acceptable for closure.

(4) Soil sampling under the piping and product dispenser islands are not required if the following requirements are complied with:

(A) All:

(i) piping that routinely contains product; and

(ii) dispensers;

are located directly above the UST system that is being

closed.

(B) The requirements of clause (A) are documented in the closure report.

(5) During removal closure, native soil and backfill that is to be returned to the underground storage tank excavation must be sampled. The sampling must meet the following requirements:

(A) The exposure criteria in accordance with IC 13-12-3-2.

(B) One (1) discrete grab sample must be taken for every fifty (50) cubic yards of native soil or backfill.

(d) Soil sampling for change-in-service must be achieved as follows:

(1) The boring locations are as follows:

(A) One (1) soil boring every twenty (20) feet around the tank area, with a minimum of four (4) borings.

(B) Each soil boring must be within three (3) feet adjacent to the underground storage tank.

(C) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology used.

(D) Each soil boring must extend two (2) feet or greater below the elevation of the base of the underground storage tank.

(E) If the soil boring depth is fifteen (15) feet or less, a minimum of two (2) soil samples are required at the following locations:

(i) The point where a contaminant is detected.

(ii) One (1) soil sample must be taken at the:

(AA) midpoint; and

(BB) bottom;

of the soil boring.

(F) If the soil boring depth is greater than fifteen (15) feet, a minimum of three (3) soil samples are required. The most shallow soil sample must be taken one (1) foot or greater below grade. Samples must be collected where the release is suspected or detected.

(2) Piping and dispenser sampling and analysis must be completed under subsection (c)(3) or (c)(4).

(3) The waiver of closure sampling requirements under subsection (h) will not be granted for change in service.

(e) Water samples for an in-place closure must be collected in the following quantities and locations:

(1) One (1) boring must be placed in each of the four (4) principal directions within ten (10) feet of the area most likely to have contaminated ground water.

(2) Each boring must extend to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release. A water sample must be collected from each boring if ground water is present within a depth of thirty (30) feet or less.

(3) If ground water is not encountered within a depth of

thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum depth of thirty (30) feet.

(4) A ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:

(A) Visual staining of the soil or water.

(B) Field screening with the following:

(i) Flame ionization detector or FID.

(ii) Photo ionization detector or PID.

(iii) Field gas chromatograph or GC.

(C) Petroleum odors.

(D) Laboratory analytical results.

(5) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground water zone is not encountered in the boring, an owner or operator may contact the agency for approval of alternative sampling or waiver of ground water sampling requirements. The agency may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:

(A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.

(B) A soil sample collected immediately above the bedrock does not have a contaminant.

(f) Water samples for a removal closure must be collected in the following quantities and locations:

(1) If any water is encountered in any excavation, a minimum of one (1) water sample must be appropriately collected from the water encountered.

(2) A ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:

(A) Visual staining of the soil or water.

(B) Field screening with the following:

(i) Flame ionization detector or FID.

(ii) Photo ionization detector or PID.

(iii) Field gas chromatograph or GC.

(C) Petroleum odors.

(D) Laboratory analytical results.

(3) The sample collected in subdivision (2) must be collected from a continuously sampled boring that extends to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release.

(4) If ground water is not encountered within a depth of thirty (30) feet, a soil sample must be obtained at the base of the boring.

(5) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground water zone is not encountered in the boring, an owner or

operator may contact the agency for approval of alternative sampling or waiver of ground water sampling requirements. The agency may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:

- (A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.
- (B) A soil sample collected immediately above the bedrock does not have a contaminant.

(g) Water samples for a change-in-service must be collected in the following quantities and locations:

- (1) One (1) boring must be placed in each of the four (4) principal directions within ten (10) feet of the area most likely to have contaminated ground water.
- (2) Each boring must extend to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release. A water sample must be collected from each boring if ground water is present within a depth of thirty (30) feet depth or less.
- (3) If ground water is not encountered within a depth of thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum depth of thirty (30) feet.
- (4) A ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:
 - (A) Visual staining of the soil or water.
 - (B) Field screening with the following:
 - (i) Flame ionization detector or FID.
 - (ii) Photo ionization detector or PID.
 - (iii) Field gas chromatograph or GC.
 - (C) Petroleum odors.
 - (D) Laboratory analytical results.

(5) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground water zone is not encountered in the boring, an owner or operator may contact the agency for approval of alternative sampling or waiver of ground water sampling requirements. The agency may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:

- (A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.
- (B) A soil sample collected immediately above the bedrock does not have a contaminant.

(h) Closure sampling waiver requirements must be completed as follows:

- (1) The commissioner may waive closure sampling based on the following:

(A) The LUST incident number is assigned and the following requirements are completed:

- (i) Closure is conducted due to a confirmed release at the site.
 - (ii) The confirmed release occurred before the request for closure.
- (B) The initial site characterization meets the requirements of 329 IAC 9-5-5.1.
- (C) The corrective action plan meets the requirements of 329 IAC 9-5-7.
- (2) Sites that have previous releases and are not under remediation at the time of closure are not eligible for the closure sampling waiver.

(Solid Waste Management Board; 329 IAC 9-6-2.5)

SECTION 38. 329 IAC 9-6-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-6-3 Applicability to previously closed UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 3. When directed by the commissioner, the owner and operator of a UST system permanently closed before December 22, 1988, shall assess the excavation zone and close the UST system in accordance with this rule, **and the closure must be performed by a person certified under the rules of the fire prevention and building safety commission at 675 IAC 12-12**, if releases from the underground storage tank may, in the judgment of the commissioner, pose a current or potential threat to human health and the environment. ~~under rules of the fire prevention and building safety commission at 675 IAC 12-12~~; *(Solid Waste Management Board; 329 IAC 9-6-3; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1074; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 39. 329 IAC 9-6-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-6-4 Closure records

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 4. The owner and operator shall maintain records in accordance with 329 IAC 9-3-1 that are capable of demonstrating compliance with closure requirements under this rule. The results of the excavation zone assessment required in section 2 of this rule must be submitted to the agency within thirty (30) days after completion of ~~permanent~~ closure or change-in-service of the UST system. Results of the excavation zone assessment must be maintained for at least three (3) years after completion of ~~permanent~~ closure or change-in-service in one (1) of the following ways:

- (1) By the owner and operator who took the UST system out of service.

(2) By the current owner and operator of the UST system site.
 (3) By mailing these records to the agency if the records cannot be maintained at the closed facility.
(Solid Waste Management Board; 329 IAC 9-6-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1074; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 40. 329 IAC 9-6-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-6-5 Temporary closure

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 5. (a) When ~~a~~ **an** UST system is temporarily closed, the owner and operator shall complete the following:

- (1) Continue operation and maintenance of corrosion protection under 329 IAC 9-3.1-2.
- (2) Continue operation and maintenance of any release detection under 329 IAC 9-7, except release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than:
 - (A) two and five-tenths (2.5) centimeters or one (1) inch of residue; or
 - (B) three-tenths percent (0.3%) by weight of the total capacity of the UST system;
 remains in the system.
- (3) Comply with 329 IAC 9-4 and 329 IAC 9-5 if a release is suspected or confirmed.

(b) When ~~a~~ **an** UST system is temporarily closed for three (3) months or ~~more~~, **longer**, the owner and operator also shall comply with the following requirements:

- (1) Leave vent lines open and functioning.
- (2) Cap and secure the following:
 - (A) All other lines.
 - (B) Pumps.
 - (C) Manways.
 - (D) Ancillary equipment.

(c) When ~~a~~ **an** UST system has been temporarily closed for twelve (12) months, the following requirements must be completed:

- (1) The owner and operator shall permanently close the UST system if it does not meet **the**:
 - (A) ~~the~~ performance standards in 329 IAC 9-2-1 for new UST systems; or
 - (B) ~~the~~ upgrading requirements in 329 IAC 9-2.1;
 except that the spill and overfill equipment requirements do not have to be met.
- (2) The owner and operator shall permanently close the substandard UST system at the end of the temporary twelve (12) month period under sections 1 through 4 of this rule.
- (3) The commissioner may grant an extension of the twelve (12) month temporary closure period based on the following:

- (A) The owner and operator shall complete a site assessment under section 2 of this rule before the owner and operator may apply for an extension.
- (B) The length of the extension is based on the following:
 - (i) The results of the site assessment under clause (A).
 - (ii) The owner and operator shall submit written proof that explains why permanent closure cannot take place within the twelve (12) month period of temporary closure.
 - (iii) The owner and operator shall submit information that explains when permanent closure will take place.

(d) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the ~~underground storage tank~~ notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal under rules of the fire prevention and building safety commission at 675 IAC 12-12. *(Solid Waste Management Board; 329 IAC 9-6-5; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 41. 329 IAC 9-7-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-7-1 General requirements for all UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 1. (a) All owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that does the following:

- (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product.
- (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
- (3) Meets the performance requirements in section 4 or 5 of this rule, with any performance claims and the manner of determination of the performance claims described in writing by the equipment manufacturer or installer. In addition, methods used after the date shown in the following table corresponding with the specified method, except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in the corresponding citation of this rule shown in the table with a probability of detection (Pd) of ninety-five hundredths (0.95) and a probability of false alarm (Pfa) of five-hundredths (0.05):

		Date After Which Pd/Pfa Was Demonstrated
Method	Citation	
Manual tank gauging	section 4(2) of this rule	December 22, 1990

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Tank tightness testing	section 4(3) of this rule	December 22, 1990
Automatic tank gauging	section 4(4) of this rule	December 22, 1990
Automatic line leak detectors	section 5(1) of this rule	September 22, 1991
Line tightness testing	section 5(2) of this rule	December 22, 1990

(b) When a release detection method that is operated under the performance standards in sections 4 and 5 of this rule indicates a release may have occurred, the owner and operator shall notify the agency under 329 IAC 9-4.

(c) Owners and operators of all UST systems shall comply with the release detection requirements of this rule by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year System Was Installed	Year When Release Detection Was Required (By December 22 of the Year Indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

New tanks (after December 22, 1988) immediately upon installation. P = Shall have begun release detection for all pressurized piping under sections 2(2)(A) and 3(2)(D) of this rule. RD = Shall have begun release detection for tanks and suction piping under sections 2(1), 2(2)(B), and 3 of this rule.

(d) Any existing UST system that cannot apply a method of release detection that complies with this rule shall complete the closure procedures under ~~329 IAC 9-6~~ **329 IAC 9-6-2.5** by the date on which release detection is required for that UST system under subsection (c). (*Solid Waste Management Board; 329 IAC 9-7-1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3723; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 42. 329 IAC 9-7-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-7-2 Requirements for petroleum UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 2. The owner and operator of a petroleum UST system shall provide release detection for tanks and piping as follows:

(1) Tanks must be monitored at least every thirty (30) days for releases using one (1) of the methods listed in section 4(4) through 4(8) of this rule, except for the following:

(A) ~~A~~ **An** UST system that meets

(i) the performance standards in 329 IAC 9-2-1 or 329 IAC 9-2.1 **and may use:**

(ii) (i) the monthly inventory control requirements in section 4(1) or 4(2) of this rule; **may use and**
(ii) tank tightness testing conducted under section 4(3) of this rule at least every five (5) years until December 22, 1998, or until ten (10) years after the tank is installed or upgraded under 329 IAC 9-2.1-1(b), whichever is later.

(B) ~~A~~ **An** UST system that does not meet the performance standards in 329 IAC 9-2-1 or 329 IAC 9-2.1 may use:

(i) monthly inventory controls conducted under section 4(1) or 4(2) of this rule; and
(ii) annual tank tightness testing conducted under section 4(3) of this rule;

until December 22, 1998, when the tank must be upgraded under 329 IAC 9-2.1 or ~~permanently~~ closed under 329 IAC 9-6-1 **through 329 IAC 9-6-2.5.**

(C) Tanks with capacity of five hundred fifty (550) gallons or less may use weekly tank gauging conducted under section 4(2) of this rule.

(2) Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one (1) of the following requirements:

(A) Underground piping that conveys regulated substances under pressure must:

(i) be equipped with an automatic line leak detector under section 5(1) of this rule; and
(ii) have an annual line tightness test conducted under section 5(2) of this rule or have monthly monitoring conducted under section 5(3) of this rule.

(B) Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three (3) years under section 5(2) of this rule or use a monthly monitoring method under section 5(3) of this rule. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure.
(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.
(iii) Only one (1) check valve is included in each suction line.

(iv) The check valve is located directly below and as close as practical to the suction pump.

(v) A method is provided that allows compliance with items (ii) through (iv) to be readily determined.

(*Solid Waste Management Board; 329 IAC 9-7-2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3724; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 43. 329 IAC 9-7-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-7-4 Methods of release detection for tanks

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 4. Each method of release detection for tanks used to meet section 2 of this rule must be conducted in accordance with the following:

(1) Product inventory control, or another test of equivalent performance, must be conducted monthly to detect a release of at least one percent (1.0%) of flow-through plus one hundred thirty (130) gallons on a monthly basis in the following manner:

(A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day.

(B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth (C) of an inch.

(C) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(D) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of product withdrawn.

(E) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth (C) of an inch at least once a month.

(F) Deliveries must be made through a drop tube that extends to within one (1) foot of the tank bottom.

(2) Manual tank gauging must meet the following requirements:

(A) Tank liquid level measurements are taken at the beginning and ending of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank.

(B) Level measurements are based on an average of two (2) consecutive stick readings at both the beginning and ending of the period in clause (A).

(C) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth (C) of an inch.

(D) A leak is suspected and subject to 329 IAC 9-4 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (1 Test)	Monthly Standard (Average of 4 Tests)
550 gallons or less	10 gallons	5 gallons
551–1,000 gallons	13 gallons	7 gallons
1,001–2,000 gallons	26 gallons	13 gallons

(E) The following requirements apply:

(i) Only tanks of five hundred fifty (550) gallons or less nominal capacity may use manual tank gauging as the

sole method of release detection.

(ii) Tanks of five hundred fifty-one (551) to two thousand (2,000) gallons may use manual tank gauging in place of **manual product** inventory control in subdivision (1).

(iii) Tanks of greater than two thousand (2,000) gallons nominal capacity must not use manual tank gauging to meet the requirements of this rule.

(3) Tank tightness testing, or another test of equivalent performance, must be capable of detecting a one-tenth (0.1) gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of the following:

(A) Thermal expansion or contraction of the product.

(B) Vapor pockets.

(C) Tank deformation, evaporation, or condensation.

(D) Location of the water table.

(4) Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(A) The automatic product level monitor test can detect a two-tenths (0.2) gallon per hour leak rate from any portion of the tank that routinely contains product.

(B) Inventory control, or another test of equivalent performance, is conducted under subdivision (1).

(5) Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(A) The materials used as backfill are sufficiently porous to readily allow diffusion of vapors from releases into the excavation area. The materials used as backfill may include any of the following:

(i) Gravel.

(ii) Sand.

(iii) Crushed rock.

(B) The stored regulated substance or a tracer compound placed in the tank system, which may include gasoline as an example, is sufficiently volatile to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank.

(C) The measurement of vapors by the monitoring device is not rendered inoperative by the:

(i) ground water;

(ii) rainfall;

(iii) soil moisture; or

(iv) other known interferences;

so that a release could go undetected for more than thirty (30) days.

(D) The **background level of background contamination for contaminants** in the excavation zone must not interfere with the method used to detect releases from the tank.

(E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of any of the following:

(i) The regulated substance stored in the tank system.

(ii) A component or components of the regulated substance stored in the tank system.

- (iii) A tracer compound placed in the tank system.
- (F) In the UST excavation zone, the site is assessed **to**:
 - (i) ~~to~~ ensure compliance with clauses (A) through (D); and
 - (ii) ~~to~~ establish the number and positioning of observation wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product.
- (G) Observation wells are clearly marked and secured to prevent damage and unauthorized access and tampering.
- (6) Testing or monitoring for liquids on the ground water must meet the following requirements:
 - (A) The regulated substance stored is immiscible in water and has a specific gravity of less than one (1).
 - (B) Ground water is never more than twenty (20) feet from the ground surface. The hydraulic conductivity of the soil between the UST system and the observation wells, monitoring wells, or monitoring devices is not less than one-hundredth (0.01) centimeter per second. The soil may consist of any of the following:
 - (i) Gravel.
 - (ii) Coarse to medium sand.
 - (iii) Coarse silt.
 - (iv) Other permeable material.
 - (C) The slotted portion of the observation well casing must be designed **to**:
 - (i) ~~to~~ prevent migration of natural soils or filter pack into the well; and
 - (ii) ~~to~~ allow entry of regulated substance on the water table into the well under both high and low ground water conditions.
 - (D) Observation wells must be sealed from the ground surface to the top of the filter pack.
 - (E) Observation wells, monitoring wells, or monitoring devices must be located as follows:
 - (i) An observation well intercepts the excavation zone.
 - (ii) A monitoring well that meets the requirements of rules of the ~~department of~~ natural resources **commission** at ~~310 IAC 16.312 IAC 13~~ is installed as close to the excavation zone as is technically feasible if an observation well cannot intercept the excavation zone.
 - (iii) A monitoring device intercepts the excavation zone or is as close to the excavation zone as is technically feasible.
 - (F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth (C) of an inch of free product on top of the ground water in the observation wells or monitoring wells.
 - (G) Within and immediately below the UST system excavation zone, the site is assessed **to**:
 - (i) ~~to~~ ensure compliance with clauses (A) through (E); and
 - (ii) ~~to~~ establish the number and positioning of observation wells, monitoring wells, or monitoring devices that will detect releases from any portion of the tank that routinely contains product.
- (H) Observation wells and monitoring wells are clearly marked and secured to prevent damage and unauthorized access and tampering.
- (7) Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one (1) of the following requirements:
 - (A) For a double-walled UST system, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product.
 - (B) For ~~a~~ **an** UST system with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier. The following must be completed:
 - (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (no more than 1×10^{-6} centimeters per second for water) to direct a release to an observation well and allow its detection.
 - (ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.
 - (iii) For cathodically protected tanks, the secondary barrier must be installed so that the secondary barrier does not interfere with the proper operation of the cathodic protection system.
 - (iv) The ground water, soil moisture, or rainfall must not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty (30) days.
 - (v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a twenty-five (25) year flood plain unless the barrier and observation well designs are for use under such conditions.
 - (vi) Observation wells are clearly marked and secured to prevent damage and unauthorized access and tampering.
 - (C) For tanks with an internally fitted liner, the following must be completed:
 - (i) An automated device that can detect a release between the inner wall of the tank and the liner.
 - (ii) The liner is compatible with the substance stored.
- (8) Any other type of release detection method, or combination of methods, may be used if one (1) of the following is completed:
 - (A) The release detection method or combination of methods must meet the following requirements:
 - (i) Capability to detect a two-tenths (0.2) gallon per hour leak rate or a release of one hundred fifty (150) gallons within a month.
 - (ii) Probability of detection of ninety-five hundredths

(0.95) and a probability of false alarm of five-hundredths (0.05).

(iii) The method is third party certified.

(B) The commissioner may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subdivisions (3) through (7) and clause (A). In comparing methods, the commissioner shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the commissioner on the method's use to ensure the protection of human health and the environment.

(Solid Waste Management Board; 329 IAC 9-7-4; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3725; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 44. 329 IAC 9-7-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-7-5 Methods of release detection for piping

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 5. Each method of release detection for piping used to meet section 2 of this rule must be conducted in accordance with the following:

(1) ~~A method~~ **Automatic line leak detectors. Methods that alerts alert** the operator to the presence of a leak by:

(A) restricting or shutting off the flow of regulated substances through piping; or

(B) triggering an audible or visual alarm;

may be used only if it detects leaks of at least three (3) gallons per hour at ten (10) pounds per square inch line pressure within one (1) hour. An annual test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements.

(2) **Line tightness testing.** A periodic line tightness test of piping may be conducted only if it can detect a one-tenth (0.1) gallon per hour leak rate at one and one-half (1½) times the operating pressure.

(3) **Applicable tank methods.** Any of the methods in section 4(5) through 4(8) of this rule may be used if the methods are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(Solid Waste Management Board; 329 IAC 9-7-5; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3727; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 45. THE FOLLOWING ARE REPEALED: 329 IAC 9-1-10.1; 329 IAC 9-1-10.2; 329 IAC 9-1-14.1; 329 IAC 9-1-29.1; 329 IAC 9-1-41; 329 IAC 9-1-41.1; 329 IAC 9-1-42.1; 329 IAC 9-5-3.1; 329 IAC 9-5-4.1; 329 IAC 9-6-2; 329 IAC 9-7-6.

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 July 20, 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 (board) will hold a public hearing on proposed amendments to 329 IAC 9.

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 Lynn West, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-3593, (800) 451-6027 (in Indiana) or e-mail at lwest@dem.state.in.us.

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, IN 46206-6015

or call (317) 233-0855, (TDD): (317) 233-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-333. Please provide a minimum of seventy-two (72) hours' notification before the hearing.

Copies of these rules are now on file at the Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor 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 #04-95

DIGEST

Amends 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, and 405 IAC 6-5-6 concerning eligibility and benefits under the Indiana Prescription Drug Program, the

Proposed Rules

definition and duration of eligibility, and the benefits for enrollees. Effective 30 days after filing with the secretary of state.

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

SECTION 1. 405 IAC 6-2-5, AS AMENDED AT 27 IR 2486, 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 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 currently has insurance that includes a prescription drug benefit, **except for a Medicare Drug Discount Card.**
- (7) Whether the applicant is on Medicaid with prescription drug assistance.
- (8) Whether the applicant intends to reside in Indiana permanently.
- (9) Proof of income.
- (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; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2486)

SECTION 2. 405 IAC 6-3-3, AS AMENDED AT 27 IR 2487, SECTION 3, 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) After July 1, 2002, program availability will be no sooner than the date complete application is received and approved.

(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.

(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.

(d) All current enrollees shall be automatically enrolled in a new benefit period on June 1, 2004. (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; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2487)

SECTION 3. 405 IAC 6-4-2, AS AMENDED AT 27 IR 2487, SECTION 4, 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 as follows** for the applicant's family size:

Family Size	Net Monthly Income Limit
1	\$1,011 \$1,048
2	\$1,364 \$1,406
3	\$1,717 \$1,764

(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; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2487)

SECTION 4. 405 IAC 6-4-3, AS AMENDED AT 27 IR 2487, SECTION 5, 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 applicant currently~~ has ~~health insurance with that includes~~ a prescription drug benefit, ~~at the time of application: except for a Medicare Drug Discount Card.~~
 - (2) The individual is not domiciled in Indiana.
 - (3) The individual does not intend to reside permanently in Indiana.
 - (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; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2487)

SECTION 5. 405 IAC 6-5-1, AS AMENDED AT 27 IR 2487, SECTION 6, 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. 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.
- (7) **Whether the individual has a Medicare Drug Discount Card and has spent the six hundred dollar (\$600) annual transitional assistance credit. The provider shall encourage the enrollee to use the Medicare Drug Discount Card benefit first.**

(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; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2487)

SECTION 6. 405 IAC 6-5-2, AS AMENDED AT 27 IR 2488, SECTION 7, 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 amount of benefit at the time of purchase, which is issued to an enrollee per benefit period, is will be limited by family monthly net income as follows: **to a maximum of one thousand two hundred dollars (\$1,200) over a period of nineteen (19) months and prorated depending on time of enrollment.**

Income Guide- line	Individual's Monthly Net Income	Couple's Monthly Net Income	Annual Bene- fit
Up to 135% of federal pov- erty guideline	Up to \$1,011 per month	Up to \$1,364 per month	50% benefit, up to \$500 benefit/year
Up to 120% of federal pov- erty guideline	Up to \$898 per month	Up to \$1,212 per month	50% benefit, up to \$750 benefit/year
Under 100% of federal pov- erty guideline	Up to \$748 per month	Up to \$1,010 per month	50% benefit, up to \$1,000 benefit/year
\$1,200 if en- rolled June – Sep- tember 2004	\$1,000 if en- rolled Octo- ber – Decem- ber 2004	\$800 if en- rolled January – March 2004	Prorate \$200 per quarter after March 2005

(b) An enrollee and spouse who are enrolled in the program will each receive the maximum benefit at the time of purchase for prescription drug expenses ~~up to the annual benefit for which amount~~ in subsection (a) ~~for which they qualify. by family income level.~~

(c) **The prescription drug program will pay seventy-five percent (75%) of the cost of prescription drugs up to the individual's maximum limit. Enrollee will pay twenty-five percent (25%) of the cost of prescription drugs up to the individual's maximum limit.**

~~(c) (d)~~ Upon such time as the enrollee exceeds the ~~annual~~ **maximum** benefit, the enrollee may use the program identifica-
tion 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; filed Mar
22, 2004, 3:15 p.m.: 27 IR 2488)

SECTION 7. 405 IAC 6-5-3, AS AMENDED AT 27 IR 2488, SECTION 8, 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. The point of service benefit shall be ~~one (1) year for~~ **a period** of continuous eligibility up to the **individual's maximum** benefit limit in accordance with section 2 of this rule. (Office of the Secretary of Family and Social Services; 405

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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; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2488)

SECTION 8. 405 IAC 6-5-4, AS AMENDED AT 27 IR 2488, SECTION 9, 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 point of service benefit is available to an enrollee for ~~one (1) year of continuous benefits through December of 2005.~~

(b) Following the expiration of the enrollee's last benefit period, the individual must reenroll for the point of service 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; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2488*)

SECTION 9. 405 IAC 6-5-6, AS AMENDED AT 27 IR 2489, SECTION 10, 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) At the point of service, benefits are available under this program on a first come, first served basis.

(b) **If eligible, enrollees are encouraged to enroll in the Medicare Drug Discount Card program and apply for the six hundred dollars (\$600) annual transitional assistance available for low-income beneficiaries. Seniors are encouraged to use the six hundred dollar (\$600) annual Medicare benefit first before using the prescription drug program benefit.**

~~(b)~~ (c) Benefits will exist under this program to the extent that appropriations are available for the program.

~~(c)~~ (d) 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; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2489*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 27, 2004 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room D,

Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments concerning eligibility and benefits under the Indiana Prescription Drug Program. 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 #03-276

DIGEST

Amends 410 IAC 6-12 regarding requirements for plan review and construction permits and adds fees for plan review. Repeals 410 IAC 6-12-2, 410 IAC 6-12-5, 410 IAC 6-12-6, and 410 IAC 6-12-15. Effective 30 days after filing with the secretary of state.

410 IAC 6-12-0.5

410 IAC 6-12-1

410 IAC 6-12-2

410 IAC 6-12-3

410 IAC 6-12-3.1

410 IAC 6-12-3.2

410 IAC 6-12-4

410 IAC 6-12-5

410 IAC 6-12-6

410 IAC 6-12-7

410 IAC 6-12-8

410 IAC 6-12-9

410 IAC 6-12-10

410 IAC 6-12-11

410 IAC 6-12-12

410 IAC 6-12-13

410 IAC 6-12-14

410 IAC 6-12-15

410 IAC 6-12-17

SECTION 1. 410 IAC 6-12-0.5 IS ADDED TO READ AS FOLLOWS:

410 IAC 6-12-0.5 Applicability

Authority: IC 16-19-3-4; IC 16-19-3-5; IC 16-19-5-1

Affected: IC 16-19

Sec. 0.5. The definitions in this rule apply throughout this rule. (*Indiana State Department of Health; 410 IAC 6-12-0.5*)

SECTION 2. 410 IAC 6-12-1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-1 "Absorption field" defined

Authority: IC 16-19-3-4; IC 16-19-3-5; IC 16-19-5-1

Affected: IC 16-19

Sec. 1. ~~As used in this rule,~~ “Absorption field” means a:
 (1) system of open-jointed tiles or perforated pipes laid in a soil;
 (2) series of trenches; or a
 (3) bed of sand, gravel, and soil;
 into which the effluent from a septic tank **or other sewage treatment devices** is pumped or flows by gravity for absorption into the soil. (*Indiana State Department of Health; 410 IAC 6-12-1; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2219; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234*)

SECTION 3. 410 IAC 6-12-3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-3 “Commissioner” defined

Authority: IC 16-19-3-4; IC 16-19-3-5
 Affected: IC 16-19

Sec. 3. ~~As used in this rule,~~ “Commissioner” means the commissioner of the ~~state board of health department~~ or his **or her** duly authorized representative. (*Indiana State Department of Health; 410 IAC 6-12-3; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2219; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234*)

SECTION 4. 410 IAC 6-12-3.1 IS ADDED TO READ AS FOLLOWS:

410 IAC 6-12-3.1 “Community wastewater disposal facility” defined

Authority: IC 16-19-3-4; IC 16-19-3-5
 Affected: IC 16-19

Sec. 3.1. “Community wastewater disposal facility” means a commercial on-site wastewater disposal facility that will serve two (2) or more properties. (*Indiana State Department of Health; 410 IAC 6-12-3.1*)

SECTION 5. 410 IAC 6-12-3.2 IS ADDED TO READ AS FOLLOWS:

410 IAC 6-12-3.2 “Department” defined

Authority: IC 16-19-3-4; IC 16-19-3-5
 Affected: IC 16-19

Sec. 3.2. “Department” means the Indiana state department of health or its authorized representative. (*Indiana State Department of Health; 410 IAC 6-12-3.2*)

SECTION 6. 410 IAC 6-12-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-4 “Person” defined

Authority: IC 16-19-3-4; IC 16-19-3-5
 Affected: IC 16-19

Sec. 4. ~~As used in this rule,~~ “Person” means **any of the following:**

- (1) An individual.

- (2) A partnership.
- (3) A copartnership.
- (4) A corporation.
- (5) A firm.
- (6) A company.
- (7) ~~An~~ association.
- (8) A society.
- (9) A holding company.
- (10) A trustee.
- (11) A school corporation.
- (12) A school city.
- (13) A school town.
- (14) A school district.
- (15) Any unit of government. ~~or~~
- (16) Any other legal entity, its or their successors or assigns, or agent of the aforesaid.

(*Indiana State Department of Health; 410 IAC 6-12-4; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2220; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234*)

SECTION 7. 410 IAC 6-12-7 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-7 Permit requirement

Authority: IC 16-19-3-4; IC 16-19-3-5
 Affected: IC 12-17-2; IC 16-19; IC 16-41

Sec. 7. No person shall cause or allow the construction, installation, or modification of any facility described hereafter, without having a valid construction permit issued in accordance with this rule. Construction permits are required for the following:

- (1) Agricultural labor camps subject to ~~IC 13-1-9;~~ **IC 16-41-26.**
- (2) Child caring institutions, day nurseries, and children’s group homes subject to ~~IC 12-3-2;~~ **IC 12-17.2.**
- (3) Mobile home parks subject to ~~IC 13-1-7;~~ **IC 16-41-27.**
- ~~(4) Motels subject to IC 13-1-8.~~
- ~~(5) Organizational campgrounds subject to IC 16-1-3-13.~~
- ~~(6) (4) Recreational vehicle campgrounds subject to IC 16-1-3-13;~~ **IC 16-19-3-4 and 410 IAC 6-7.1.**
- ~~(7) (5) Schools subject to IC 16-1-24;~~ **IC 16-41-21.**
- ~~(6) Youth camps subject to IC 16-19-3-4 and 410 IAC 6-7.2.~~

(*Indiana State Department of Health; 410 IAC 6-12-7; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2220; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234*)

SECTION 8. 410 IAC 6-12-8 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-8 Application for construction permit

Authority: IC 16-19-3-4; IC 16-19-3-5
 Affected: IC 16-19; IC 25-21.5-9-4

Sec. 8. (a) An application for a permit to construct any facility subject to section 7 of this rule shall be made to the ~~board~~

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department on forms provided by the ~~board~~ **department**. Application for a construction permit shall be made at least ninety (90) days ~~prior to~~ **before** the date construction of the facility is to commence. An application shall be considered complete only when the form is completed in its entirety, including all supplemental information required or requested by the ~~board~~ **department**. An application for a permit shall, at a minimum, include the following:

- (1) The signature of the applicant or his ~~or her~~ designated agent.
- (2) The name, business address, and business telephone number of the owner. For corporate owners, the name of the corporation, the name of its designated agent, and that agent's business address and business telephone number shall suffice.
- (3) One (1) set of detailed construction plans and specifications certified and sealed by an engineer or architect currently registered in Indiana, drawn to scale, and having sufficient clarity to be reproduced to create legible microfilm. As provided in ~~IC 25-31-1-2(h)~~, **IC 25-21.5-9-4**, registered land surveyors may only certify and seal plans for gravity sanitary sewers, storm sewers, and tile drains.
- (4) A map or other documentation showing the location of the property involved.
- (5) A plot plan, drawn to scale, showing the following:
 - (A) The location of the proposed facility with respect to property lines.
 - (B) The existing and proposed:
 - (i) structures;
 - (ii) roads;
 - (iii) parking lots;
 - (iv) sewers;
 - (v) sewage disposal systems;
 - (vi) water wells; and
 - (vii) water lines;on the property.

For those facilities ~~which that~~ will be served by a commercial on-site wastewater disposal system that includes an absorption field, the plot plan shall also show site topography with contours established at intervals of two (2) feet or less.

- (6) The fee for plan review required by section ~~16 17~~ of this rule.
- (7) The name, business address, and business telephone number, **in writing**, of the registered engineer or architect who certified and sealed the construction plans and specifications required by subdivision (3). ~~in writing~~.
- (8) For those facilities ~~which that~~ will be served by a commercial on-site wastewater disposal system that includes an absorption field, a soil profile analysis **conducted by a soil scientist currently registered in Indiana** for the soils observed in the area of the proposed absorption field. Said analysis shall:

- (A) include the name of each soil type observed;
- (B) map the approximate boundaries and specify slope for each soil type; and

~~(C) provide a description of the soil textures, soil structure, soil color, and the depth to rock or seasonal high water table in the upper five (5) feet of soil for each soil type observed.~~

all information required by 410 IAC 6-10.

(9) Wastewater characteristics and calculations used to estimate wastewater flow on the peak day, in gallons, to be disposed of. If more than one (1) type of facility is involved in the project, wastewater characteristics and calculations used to estimate wastewater flow, in gallons, from each facility on the peak day must be submitted.

(10) A summary delineating, for each diameter of pipe utilized, the estimated total length of water line, sanitary sewer, and sewage force main to be installed.

(11) All additional information requested by the ~~board~~ **department** to substantiate that the proposed facility can reasonably be expected to conform to the requirements of laws and rules applicable to the facility, without causing a:

- (A) health or safety hazard;
- (B) nuisance;
- (C) surface water pollution. or
- (D) ground water pollution.

(b) Requests for additional substantiating information made ~~pursuant to~~ **under** subsection (a)(11) shall be addressed to the registered engineer or architect who certified and sealed the construction plans and specifications in compliance with subsection (a)(3). (*Indiana State Department of Health; 410 IAC 6-12-8; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2220; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234*)

SECTION 9. 410 IAC 6-12-9 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-9 Right of entry

Authority: IC 16-19-3-4; IC 16-19-3-5

Affected: IC 16-19

Sec. 9. The ~~board~~ **department** or the local health department's authorized representative may enter upon public or private property at reasonable times and upon presentation of credentials to:

- (1) inspect facilities, equipment, or records;
- (2) investigate allegations;
- (3) determine **topography, elevations, or** soil characteristics;
- (4) conduct tests or collect samples for the purpose of obtaining information necessary to the issuance of a permit ~~pursuant to~~ **under** this rule; or
- (5) determine whether any person is subject to, or in violation of, this rule or any permit or order issued ~~pursuant to~~ **under** this rule.

(*Indiana State Department of Health; 410 IAC 6-12-9; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2221; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234*)

SECTION 10. 410 IAC 6-12-10 IS AMENDED TO READ

AS FOLLOWS:

410 IAC 6-12-10 Official's signature; effective date

Authority: IC 16-19-3-4; IC 16-19-3-5

Affected: IC 16-19

Sec. 10. Construction permits shall be:

- (1) signed by the commissioner on behalf of the **board department**; and ~~shall be~~
- (2) considered issued as of the date of mailing.

(Indiana State Department of Health; 410 IAC 6-12-10; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2221; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 11. 410 IAC 6-12-11 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-11 Permit conditions

Authority: IC 16-19-3-4; IC 16-19-3-5

Affected: IC 16-19

Sec. 11. The **board department** may specify in its construction permits any limitations, terms, or conditions necessary to provide a functional, easily operated, enduring facility or to prevent a health or safety hazard, nuisance, surface water pollution, or ground water pollution. In addition, all construction permits shall contain the following requirements, not necessarily verbatim:

- (1) The permit shall expire on the last day of the twelfth month following the month of permit issuance, unless the applicant has started construction of the facility on or before the date of permit expiration.
- (2) That all necessary local permits and approvals shall be obtained before construction is begun.
- (3) That any proposed changes, alterations, or additions to the approved facilities be submitted to the **board department** for review and approval prior to the start of construction ~~which~~ **that** will effect the proposed changes, alterations, or additions.
- (4) That, if pollution, health hazards, or nuisance conditions occur ~~which that~~ are attributable to the facility permitted, immediate corrective action shall be taken by the owner.
- (5) That the permittee notify the **board department** and the local health department at least seven (7) days before construction of the approved facilities is to commence.

(Indiana State Department of Health; 410 IAC 6-12-11; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2221; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 12. 410 IAC 6-12-12 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-12 Standards for issuance

Authority: IC 16-19-3-4; IC 16-19-3-5

Affected: IC 16-19

Sec. 12. The **board department** may reject an application for

permit to construct a facility unless the applicant has submitted the following:

- (1) All documentation and fees required by sections 8(a) and ~~16~~ **17** of this rule.
- (2) Evidence that the facility can be constructed, modified, or installed and operated in such a manner that it will not violate any law or rule applicable to the facility, or any other applicable sanitation, health, siting, or pollution control rules or ordinances existing at the time of application.

(Indiana State Department of Health; 410 IAC 6-12-12; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2222; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 13. 410 IAC 6-12-13 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-13 Construction permit revocations and modifications

Authority: IC 16-19-3-4; IC 16-19-3-5

Affected: IC 16-19

Sec. 13. A facility construction permit may be revoked or modified by the **board department** for any of the following causes:

- (1) Violation of a law or rule applicable to the facility, or any other applicable sanitation, health, siting, or pollution control rules or ordinances existing at the time of application.
- (2) Violation of any limitation, term, or condition contained in the construction permit.
- (3) Failure to disclose all facts relevant to construction and use of the facility that might adversely impact health, surface water, or ground water.
- (4) Any misrepresentation made to obtain the construction permit.
- (5) Any other change, situation, or activity relating to use of the facility ~~which; that,~~ in the judgment of the **board department**, is not consistent with the purposes of this rule or a law or rule applicable to the facility.

(Indiana State Department of Health; 410 IAC 6-12-13; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2222; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 14. 410 IAC 6-12-14 IS AMENDED TO READ AS FOLLOWS:

410 IAC 6-12-14 Denial of an application for construction permit

Authority: IC 16-19-3-4; IC 16-19-3-5

Affected: IC 16-19

Sec. 14. An application for facility construction permit may be denied by the **board department** for any of the following causes:

- (1) Any misrepresentation made in the application.
- (2) Failure of the owner, or the engineer or architect who certified and sealed the construction plans and specifications,

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to respond to a request for revised plans and specifications or additional information made pursuant to under section 8 of this rule, within six (6) months of receiving the request.

(3) Failure to show that the facility can be:

- (A) constructed;
- (B) operated;
- (C) maintained; or
- (D) abandoned;

in compliance with any law or rule applicable to the facility.
(Indiana State Department of Health; 410 IAC 6-12-14; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2222; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 15. 410 IAC 6-12-17 IS ADDED TO READ AS FOLLOWS:

410 IAC 6-12-17 Fees

Authority: IC 16-19-3-4; IC 16-19-3-5

Affected: IC 16-19; IC 16-21-2; IC 16-28-1; IC 16-41-27

Sec. 17. Fees shall be assessed for plan review and related services rendered by the department, in accordance with the following:

(1) For each plan review conducted for the following, the schedule of fees is:

- (A) A commercial on-site wastewater disposal facility under 410 IAC 6-10: two hundred dollars (\$200).
- (B) A community wastewater disposal facility under 410 IAC 6-10: seven hundred dollars (\$700).
- (C) An ambulatory outpatient surgery center under IC 16-21-2 and 410 IAC 15.2: four hundred fifty dollars (\$450).
- (D) A health facility under IC 16-28-1 and 410 IAC 16.2: one hundred fifty dollars (\$150).
- (E) A new hospital or hospital addition under IC 16-21-2 and 410 IAC 15: five hundred fifty dollars (\$550).
- (F) Remodeling of an existing hospital under IC 16-21-2 and 410 IAC 15: three hundred dollars (\$300).
- (G) A mobile home park or mobile home park addition under IC 16-41-27 and this rule: three hundred dollars (\$300).

(2) For projects that include both a commercial on-site wastewater disposal facility and a facility subject to subdivision (1)(C) through (1)(F), the total fee for plan review shall be the larger of the two (2) fees applicable to that project under subdivision (1).

(3) No additional fee shall be assessed for review of revised plans for the same project.

(4) Before a service enumerated in subdivision (1) can proceed, the requisite fee must have been received. Only a check, a money order, or an electronic transfer of funds is acceptable. All checks or money orders shall be made payable to the "Indiana State Department of Health". Electronic transfer of funds will be acceptable only when the department is capable of receiving such transfers.

Only that portion of a payment made in excess of the requisite fee is refundable.

(Indiana State Department of Health; 410 IAC 6-12-17)

SECTION 16. THE FOLLOWING ARE REPEALED: 410 IAC 6-12-2; 410 IAC 6-12-5; 410 IAC 6-12-6; 410 IAC 6-12-15.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 26, 2004 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 to 410 IAC 6-12 regarding requirements for plan review and construction permits and fees for plan review. Copies of these rules are now on file at the Indiana State Department of Health, Health Care Regulatory Services Commission, 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 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule

LSA Document #04-60

DIGEST

Adds 410 IAC 7-24 to establish minimum standards for the operation of retail food establishments. Repeals 410 IAC 7-20. Effective 30 days after filing with the secretary of state.

410 IAC 7-20

410 IAC 7-24

SECTION 1. 410 IAC 7-24 IS ADDED TO READ AS FOLLOWS:

Rule 24. Sanitary Standards for the Operation of Retail Food Establishments

410 IAC 7-24-1 Applicability

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 1. The definitions in this rule apply throughout this rule. (Indiana State Department of Health; 410 IAC 7-24-1)

410 IAC 7-24-2 "Acid foods" defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 2. “Acid foods” means foods that have a natural pH of 4.6 or below. (*Indiana State Department of Health; 410 IAC 7-24-2*)

410 IAC 7-24-3 “Acidified foods” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 3. (a) “Acidified foods” means low-acid foods to which acid or acid food is added. The term includes, but is not limited to:

- (1) beans;
- (2) cucumbers;
- (3) cabbage;
- (4) artichokes;
- (5) cauliflower;
- (6) puddings;
- (7) peppers;
- (8) tropical fruits; and
- (9) fish;

singly or in any combination. These foods have an a_w greater than eighty-five hundredths (0.85), a finished equilibrium pH of 4.6 or below, and may be called pickled, such as “pickled cauliflower”.

(b) The term does not include:

- (1) carbonated beverages;
- (2) jams;
- (3) jellies;
- (4) preserves; and
- (5) acid foods;

including such foods as standardized and nonstandardized food dressings and condiment sauces, that contain small amounts of low-acid food and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid or acid food, and foods that are stored, distributed, and retailed under refrigeration. (*Indiana State Department of Health; 410 IAC 7-24-3*)

410 IAC 7-24-4 “Adulterated” defined

Authority: IC 16-42-5-5
Affected: IC 16-42

Sec. 4. “Adulterated” has the meaning set forth in IC 16-42-1 through IC 16-42-4. (*Indiana State Department of Health; 410 IAC 7-24-4*)

410 IAC 7-24-5 “Approved” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 5. “Approved” means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health. (*Indiana State Department of Health; 410 IAC 7-24-5*)

410 IAC 7-24-6 “ a_w ” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 6. “ a_w ” means water activity that is as follows:

- (1) A measure of the free moisture in a food.
- (2) The quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.
- (3) Indicated by the symbol a_w .

(*Indiana State Department of Health; 410 IAC 7-24-6*)

410 IAC 7-24-7 “Beverage” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 7. “Beverage” means a liquid for drinking, including water. (*Indiana State Department of Health; 410 IAC 7-24-7*)

410 IAC 7-24-8 “Bottled drinking water” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 8. “Bottled drinking water” means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water. (*Indiana State Department of Health; 410 IAC 7-24-8*)

410 IAC 7-24-9 “Casing” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 9. “Casing” means a tubular container for sausage products made of either natural or artificial (synthetic) material. (*Indiana State Department of Health; 410 IAC 7-24-9*)

410 IAC 7-24-10 “Catering” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 10. “Catering” means the preparation of food in an approved retail food establishment and may include the transportation of such food for service and consumption at some other site. (*Indiana State Department of Health; 410 IAC 7-24-10*)

410 IAC 7-24-11 “Certification number” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 11. “Certification number” means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program. (*Indiana State Department of Health; 410 IAC 7-24-11*)

410 IAC 7-24-12 “CFR” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 12. “CFR” means the Code of Federal Regulations. *(Indiana State Department of Health; 410 IAC 7-24-12)*

410 IAC 7-24-13 “CIP” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 13. “CIP” means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. The term does not include the cleaning of equipment, such as band saws, slicers, or mixers, that are subjected to in-place manual cleaning without the use of a CIP system. *(Indiana State Department of Health; 410 IAC 7-24-13)*

410 IAC 7-24-14 “Color additive” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 14. “Color additive” has the meaning set forth in the Federal Food, Drug, and Cosmetic Act, Section 201(t) and 21 CFR 70. *(Indiana State Department of Health; 410 IAC 7-24-14)*

410 IAC 7-24-15 “Comminuted” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 15. “Comminuted” means reduced in size by methods, including chopping, flaking, grinding, or mincing. The term includes the following:

- (1) Fish or meat products that are reduced in size and restructured or reformulated, such as the following:**
 - (A) Gefilte fish.**
 - (B) Gyros.**
 - (C) Ground beef.**
 - (D) Sausage.**
- (2) A mixture of two (2) or more types of meat that have been reduced in size and combined, such as sausages made from two (2) or more meats.**

(Indiana State Department of Health; 410 IAC 7-24-15)

410 IAC 7-24-16 “Commissary” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 16. “Commissary” means a registered catering establishment, restaurant, or any retail food establishment in which food, food containers, or food supplies are:

- (1) kept;**
- (2) handled;**
- (3) prepared;**
- (4) packaged; or**
- (5) stored;**

from which meals are catered and mobile retail food establishments or pushcarts are serviced. *(Indiana State Department of Health; 410 IAC 7-24-16)*

410 IAC 7-24-17 “Confirmed disease outbreak” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 17. “Confirmed disease outbreak” means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness. *(Indiana State Department of Health; 410 IAC 7-24-17)*

410 IAC 7-24-18 “Consumer” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 18. “Consumer” means a person who is a member of the public who:

- (1) takes possession of food;**
- (2) is not functioning in the capacity of an operator of a retail food establishment or food processing plant; and**
- (3) does not offer the food for resale.**

(Indiana State Department of Health; 410 IAC 7-24-18)

410 IAC 7-24-19 “Corrosion-resistant material” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 19. “Corrosion-resistant material” means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment. *(Indiana State Department of Health; 410 IAC 7-24-19)*

410 IAC 7-24-20 “Critical control point” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 20. “Critical control point” means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk. *(Indiana State Department of Health; 410 IAC 7-24-20)*

410 IAC 7-24-21 “Critical item” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 21. “Critical item” means a provision of this rule that, if in noncompliance, is more likely than other violations to significantly contribute to food contamination, illness, or environmental health hazard. *(Indiana State Department of Health; 410 IAC 7-24-21)*

410 IAC 7-24-22 “Critical limit” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 22. “Critical limit” means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur. (*Indiana State Department of Health; 410 IAC 7-24-22*)

410 IAC 7-24-23 “Department” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 23. “Department” means the Indiana state department of health or its authorized representative. (*Indiana State Department of Health; 410 IAC 7-24-23*)

410 IAC 7-24-24 “Disclosure” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 24. “Disclosure” means a written statement that clearly identifies the animal-derived foods that are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens. (*Indiana State Department of Health; 410 IAC 7-24-24*)

410 IAC 7-24-25 “Drinking water” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 25. (a) “Drinking water” means water that meets the requirements of 327 IAC 8.

(b) The term is traditionally known as potable water.

(c) The term includes water, except where the term used connotes that the water is not potable, such as the following:

- (1) Boiler water.
- (2) Mop water.
- (3) Rainwater.
- (4) Wastewater.
- (5) Nondrinking water.

(*Indiana State Department of Health; 410 IAC 7-24-25*)

410 IAC 7-24-26 “Dry storage area” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 26. “Dry storage area” means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods, such as single-service items. (*Indiana State Department of Health; 410 IAC 7-24-26*)

410 IAC 7-24-27 “Easily cleanable” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 27. (a) “Easily cleanable” means a characteristic of a surface that:

- (1) allows effective removal of soil by normal cleaning methods;
- (2) is dependent on the material, design, construction, and installation of the surface; and
- (3) varies with the likelihood of the surface’s role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface’s approved placement, purpose, and use.

(b) The term includes a tiered application of the criteria that qualify the surface as easily cleanable as specified under subsection (a) to different situations in which varying degrees of cleanability are required, such as the:

- (1) appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
- (2) need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

(*Indiana State Department of Health; 410 IAC 7-24-27*)

410 IAC 7-24-28 “Easily movable” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 28. “Easily movable” means:

- (1) portable, mounted on casters, gliders, or rollers, or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
- (2) having:
 - (A) no utility connection;
 - (B) a utility connection that disconnects quickly; or
 - (C) a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(*Indiana State Department of Health; 410 IAC 7-24-28*)

410 IAC 7-24-29 “Employee” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 29. “Employee” means any of the following:

- (1) The person-in-charge.
- (2) The person having supervisory or management duties.
- (3) The person on the payroll.
- (4) A family member.
- (5) A volunteer.
- (6) A person performing work under contractual agreement.
- (7) Any other person working in a retail food establishment.

(*Indiana State Department of Health; 410 IAC 7-24-29*)

410 IAC 7-24-30 “EPA” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 30. “EPA” means the United States Environmental Protection Agency. (*Indiana State Department of Health; 410 IAC 7-24-30*)

410 IAC 7-24-31 “Equipment” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 31. (a) “Equipment” means an article that is used in the operation of a retail food establishment, such as the following:

- (1) A freezer.
- (2) A grinder.
- (3) A hood.
- (4) An ice maker.
- (5) A meat block.
- (6) A mixer.
- (7) An oven.
- (8) A reach-in refrigerator.
- (9) A scale.
- (10) A sink.
- (11) A slicer.
- (12) A stove.
- (13) A table.
- (14) A temperature measuring device for ambient air.
- (15) A vending machine.
- (16) A warewashing machine.

(b) The term does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as the following:

- (1) Hand trucks.
- (2) Forklifts.
- (3) Dollies.
- (4) Pallets.
- (5) Racks.
- (6) Skids.

(*Indiana State Department of Health; 410 IAC 7-24-31*)

410 IAC 7-24-32 “Exclude” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 32. “Exclude” means to prevent a person from working as a food employee or entering a retail food establishment except for those areas open to the general public. (*Indiana State Department of Health; 410 IAC 7-24-32*)

410 IAC 7-24-33 “Fish” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 33. (a) “Fish” means fresh or saltwater finfish, crustaceans, all mollusks, and all other forms of aquatic life, such as:

- (1) alligators;
- (2) frogs;
- (3) aquatic turtles;
- (4) jellyfish;
- (5) sea cucumbers;
- (6) sea urchins; and
- (7) the roe of such animals;

other than birds or mammals, if such animal life is intended for human consumption.

(b) The term includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner. (*Indiana State Department of Health; 410 IAC 7-24-33*)

410 IAC 7-24-34 “Food” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 34. “Food” means the following:

- (1) Articles used for food, drink, confectionery, or condiment whether simple, mixed, or compound.
- (2) Substances or ingredients used in the preparation of the items described in subdivision (1).

(*Indiana State Department of Health; 410 IAC 7-24-34*)

410 IAC 7-24-35 “Food additive” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 35. “Food additive” has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(s) and 21 CFR 170. (*Indiana State Department of Health; 410 IAC 7-24-35*)

410 IAC 7-24-36 “Foodborne disease outbreak” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 36. (a) “Foodborne disease outbreak” means an incident, except as specified under subsection (b), in which:

- (1) there is an occurrence of two (2) or more cases of a similar illness resulting from the ingestion of a common food; and
- (2) epidemiological analysis implicates the food as the source of the illness.

(b) The term includes a single case of illness from botulism or chemical poisoning. (*Indiana State Department of Health; 410 IAC 7-24-36*)

410 IAC 7-24-37 “Food-contact surface” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 37. “Food-contact surface” means a surface of equipment or a utensil:

- (1) with which food normally comes into contact; or
- (2) from which food may drain, drip, or splash into a food or onto a surface normally in contact with food.

(Indiana State Department of Health; 410 IAC 7-24-37)

410 IAC 7-24-38 “Food employee” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 38. “Food employee” means an individual working with food, food equipment or utensils, or food-contact surfaces. *(Indiana State Department of Health; 410 IAC 7-24-38)*

410 IAC 7-24-39 “Food processing plant” defined

Authority: IC 16-42-5-5

Affected: IC 15-2.1; IC 16-42-5

Sec. 39. (a) “Food processing plant” means a commercial operation, such as:

- (1) a wholesale food establishment regulated under IC 16-42-5 and 410 IAC 7-21;
- (2) a dairy operation regulated under IC 15-2.1-23 and 345 IAC 8; and
- (3) a meat and poultry operation regulated under IC 15-2.1-24;

that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.

(b) The term does not include a retail food establishment as defined under section 79 of this rule. *(Indiana State Department of Health; 410 IAC 7-24-39)*

410 IAC 7-24-40 “Game animal” defined

Authority: IC 16-42-5-5

Affected: IC 15-2.1-24; IC 16-42-5

Sec. 40. “Game animal” means an animal, the products of which are food, that is not:

- (1) regulated under IC 15-2.1-24;
- (2) fish as defined in section 33 of this rule; and
- (3) possessed or raised in violation of state or federal law.

(Indiana State Department of Health; 410 IAC 7-24-40)

410 IAC 7-24-41 “General use pesticide” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 41. “General use pesticide” means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175. *(Indiana State Department of Health; 410 IAC 7-24-41)*

410 IAC 7-24-42 “Grade A standards” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 42. “Grade A standards” means the requirements of the United States Public Health Service, Food and Drug Administration (FDA) Grade A Pasteurized Milk Ordinance and Grade A Condensed and Dry Milk Ordinance with which certain fluid and dry milk and milk products comply. *(Indiana State Department of Health; 410 IAC 7-24-42)*

410 IAC 7-24-43 “HACCP plan” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 43. “HACCP plan” means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods. *(Indiana State Department of Health; 410 IAC 7-24-43)*

410 IAC 7-24-44 “Hazard” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 44. “Hazard” means a biological, chemical, or physical property that may cause an unacceptable consumer health risk. *(Indiana State Department of Health; 410 IAC 7-24-44)*

410 IAC 7-24-45 “Hermetically sealed container” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 45. “Hermetically sealed container” means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low-acid canned foods, to maintain the commercial sterility of its contents after processing. *(Indiana State Department of Health; 410 IAC 7-24-45)*

410 IAC 7-24-46 “Highly susceptible population” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 46. “Highly susceptible population” means a group of persons who are more likely than other populations to experience foodborne disease because they are:

- (1) immunocompromised or adults who are at least sixty-five (65) years of age and in a hospital;
- (2) preschool age children in a facility that provides custodial care, such as a child care center; or
- (3) children nine (9) years of age or younger in a school and custodial child care facility that are served juice.

(Indiana State Department of Health; 410 IAC 7-24-46)

410 IAC 7-24-47 “Imminent health hazard” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 47. “Imminent health hazard” means a significant

threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the:

- (1) number of potential injuries or illnesses; and
- (2) nature, severity, and duration of the anticipated injury or illness.

(Indiana State Department of Health; 410 IAC 7-24-47)

410 IAC 7-24-48 “Injected” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 48. “Injected” means manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat, such as by processes that may be referred to as injecting, pinning, or stitch pumping. *(Indiana State Department of Health; 410 IAC 7-24-48)*

410 IAC 7-24-49 “Juice” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 49. (a) “Juice” means the aqueous liquid expressed or extracted from:

- (1) one (1) or more fruits or vegetables;
- (2) purées of the edible portions of one (1) or more fruits or vegetables; or
- (3) any concentrate of such liquid or purée.

The term does not apply to standards of identity.

(b) The term includes juice as:

- (1) a whole beverage;
- (2) an ingredient of a beverage; and
- (3) a purée as an ingredient of a beverage.

(Indiana State Department of Health; 410 IAC 7-24-49)

410 IAC 7-24-50 “Kitchenware” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 50. “Kitchenware” means food preparation and storage utensils. *(Indiana State Department of Health; 410 IAC 7-24-50)*

410 IAC 7-24-51 “Law” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 51. “Law” means applicable state and federal statutes and regulations and local ordinances. *(Indiana State Department of Health; 410 IAC 7-24-51)*

410 IAC 7-24-52 “Linens” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 52. “Linens” means fabric items, such as the following:

- (1) Cloth hampers.
- (2) Cloth napkins.
- (3) Table cloths.
- (4) Wiping cloths.
- (5) Work garments, including cloth gloves.

(Indiana State Department of Health; 410 IAC 7-24-52)

410 IAC 7-24-53 “Meat” defined

Authority: IC 16-42-5-5

Affected: IC 15-2.1-24; IC 16-42-5

Sec. 53. (a) “Meat” means the food products of animals, such as:

- (1) pork;
- (2) beef;
- (3) lamb; and
- (4) ratite;

included under IC 15-2.1-24.

(b) The term does not include:

- (1) fish;
- (2) poultry; and
- (3) game animals.

(Indiana State Department of Health; 410 IAC 7-24-53)

410 IAC 7-24-54 “Misbranded” defined

Authority: IC 16-42-5-5

Affected: IC 16-42

Sec. 54. “Misbranded” has the meaning set forth in IC 16-42-1 through IC 16-42-4, and 410 IAC 7-5. *(Indiana State Department of Health; 410 IAC 7-24-54)*

410 IAC 7-24-55 “Mobile retail food establishment” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 55. “Mobile retail food establishment” means a retail food establishment that is:

- (1) wheeled;
- (2) on skids;
- (3) mounted on a vehicle;
- (4) a marine vessel; or
- (5) otherwise readily movable;

such as a pushcart or trailer. *(Indiana State Department of Health; 410 IAC 7-24-55)*

410 IAC 7-24-56 “Molluscan shellfish” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 56. “Molluscan shellfish” means any edible species of fresh or frozen:

- (1) oysters;
- (2) clams;

(3) mussels; and
 (4) scallops;
 or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle. (*Indiana State Department of Health; 410 IAC 7-24-56*)

410 IAC 7-24-57 “Packaged” defined

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 57. (a) “Packaged” means:

- (1) bottled;
- (2) canned;
- (3) cartoned;
- (4) securely bagged; or
- (5) securely wrapped;

whether packaged in a retail food establishment or a food processing plant.

(b) The term does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer. (*Indiana State Department of Health; 410 IAC 7-24-57*)

410 IAC 7-24-58 “Person” defined

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 58. “Person” means any of the following:

- (1) An association.
- (2) A corporation.
- (3) An individual.
- (4) A partnership.
- (5) Any other legal entity, government, or governmental subdivision or agency.

(*Indiana State Department of Health; 410 IAC 7-24-58*)

410 IAC 7-24-59 “Personal care items” defined

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 59. (a) “Personal care items” means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person’s health, hygiene, or appearance.

(b) The term includes the following items, such as:

- (1) Medicines.
- (2) First aid supplies.
- (3) Cosmetics.
- (4) Toiletries.

(*Indiana State Department of Health; 410 IAC 7-24-59*)

410 IAC 7-24-60 “Person-in-charge” defined

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 60. “Person-in-charge” means the individual present at a retail food establishment who is responsible for the operation at the time of inspection. (*Indiana State Department of Health; 410 IAC 7-24-60*)

410 IAC 7-24-61 “pH” defined

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 61. “pH” means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero (0) and seven (7) indicate acidity, and values between seven (7) and fourteen (14) indicate alkalinity. The value for pure distilled water is seven (7), which is considered neutral. (*Indiana State Department of Health; 410 IAC 7-24-61*)

410 IAC 7-24-62 “Physical facilities” defined

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 62. “Physical facilities” means the structure and interior surfaces of a retail food establishment, including floors, walls, ceilings, and accessories, such as the following:

- (1) Soap and towel dispensers.
- (2) Attachments, such as the following:
 - (A) Light fixtures.
 - (B) Heating or air conditioning system vents.

(*Indiana State Department of Health; 410 IAC 7-24-62*)

410 IAC 7-24-63 “Plumbing fixture” defined

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 63. “Plumbing fixture” means a receptacle or device that:

- (1) is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or
- (2) discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(*Indiana State Department of Health; 410 IAC 7-24-63*)

410 IAC 7-24-64 “Plumbing system” defined

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 64. “Plumbing system” means the following:

- (1) The water supply and distribution pipes.
- (2) Plumbing fixtures and traps.
- (3) Soil, waste, and vent pipes.
- (4) Sanitary and storm sewers and building drains, including their respective:
 - (A) connections;
 - (B) devices; and

- (C) appurtenances;
within the premises.
- (5) Water-treating equipment.

(Indiana State Department of Health; 410 IAC 7-24-64)

410 IAC 7-24-65 “Poisonous or toxic materials” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 65. “Poisonous or toxic materials” means substances that are not intended for ingestion and are included in four (4) categories, as follows:

- (1) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as the following:
 - (A) Caustics.
 - (B) Acids.
 - (C) Drying agents.
 - (D) Polishes.
 - (E) Other chemicals.
- (2) Pesticides except sanitizers, which include substances such as insecticides and rodenticides.
- (3) Substances necessary for the operation and maintenance of the establishment, such as nonfood grade lubricants and personal care items that may be deleterious to health.
- (4) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(Indiana State Department of Health; 410 IAC 7-24-65)

410 IAC 7-24-66 “Potentially hazardous food” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 66. (a) “Potentially hazardous food” means a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting any of the following:

- (1) The rapid and progressive growth of infectious or toxigenic microorganisms.
- (2) The growth and toxin production of *Clostridium botulinum*.
- (3) In raw shell eggs, the growth of *Salmonella enteritidis*.

(b) The term includes the following:

- (1) A food of animal origin that is raw or heat treated.
- (2) A food of plant origin that is heat-treated or consists of raw seed sprouts.
- (3) Cut melons.
- (4) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under subsection (a).

(c) The term does not include any of the following:

- (1) An air-cooled hard-boiled egg with shell intact.

- (2) A food with an a_w value of eighty-five hundredths (0.85) or less.

- (3) A food with a pH level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit.

- (4) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

- (5) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *Salmonella enteritidis* in eggs or *Clostridium botulinum* cannot occur, such as a food that:

- (A) has an a_w and a pH that are above the levels specified under subdivisions (2) and (3); and

- (B) may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.

- (6) A food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified under subsection (a).

(Indiana State Department of Health; 410 IAC 7-24-66)

410 IAC 7-24-67 “Poultry” defined

Authority: IC 16-42-5-5
Affected: IC 15-2.1-24; IC 16-42-5

Sec. 67. “Poultry” means a:

- (1) domesticated bird included under IC 15-2.1-24 and is not meat; or
- (2) game animal.

(Indiana State Department of Health; 410 IAC 7-24-67)

410 IAC 7-24-68 “ppm” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 68. “ppm” means parts per million, which is equivalent to milligrams per liter. *(Indiana State Department of Health; 410 IAC 7-24-68)*

410 IAC 7-24-69 “Premises” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 69. “Premises” means the physical facility, its contents, and the:

- (1) contiguous land or property under the control of the retail food establishment; or

- (2) land or property not described under subdivision (1) if its facilities and contents are under the control of the owner or operator of the retail food establishment and may impact personnel, facilities, or operations, if a retail food establishment is only one (1) component of a larger

operation, such as a:

- (A) health care facility;
- (B) hotel;
- (C) motel;
- (D) school;
- (E) recreational camp; or
- (F) prison.

(Indiana State Department of Health; 410 IAC 7-24-69)

410 IAC 7-24-70 “Primal cut” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 70. “Primal cut” means a basic major cut into which carcasses and sides of meat are separated, such as a:

- (1) beef round;
- (2) pork loin;
- (3) lamb flank; or
- (4) veal breast.

(Indiana State Department of Health; 410 IAC 7-24-70)

410 IAC 7-24-71 “Public water system” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 71. “Public water system” has the meaning set forth in 327 IAC 8. *(Indiana State Department of Health; 410 IAC 7-24-71)*

410 IAC 7-24-72 “Ready-to-eat food” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 72. (a) “Ready-to-eat food” means food that:

- (1) is in a form that is edible without additional preparation to achieve food safety, as specified under section 162 of this rule, section 182(a) through 182(c) of this rule, or section 183 of this rule;
- (2) is a raw or partially cooked animal food and the consumer is advised as specified under section 182(d) of this rule; or
- (3) may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(b) “Ready-to-eat food” includes, but is not limited to, the following:

- (1) Raw animal food that is cooked as specified under section 182 or 183 of this rule or frozen as specified under section 162 of this rule.
- (2) Raw fruits and vegetables that are washed as specified under section 175 of this rule.
- (3) Fruits and vegetables that are cooked for hot holding, as specified under section 186 of this rule.
- (4) All potentially hazardous food that is cooked to the temperature and time required for the specific food under section 182, 183, or 186 of this rule and cooled as specified in section 189 of this rule.

(5) Plant food for which further washing, cooking, or other processing is not required for food safety and from which:

- (A) rinds;
- (B) peels;
- (C) husks; or
- (D) shells;

if naturally present, are removed.

(6) Substances derived from plants, such as the following:

- (A) Spices.
- (B) Seasonings.
- (C) Sugar.

(7) Bakery items such as:

- (A) bread;
- (B) cakes;
- (C) pies;
- (D) fillings; or
- (E) icing;

for which further cooking is not required for food safety.

(8) The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens:

- (A) Dry, fermented sausages, such as dry salami or pepperoni.
- (B) Salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham.
- (C) Dried meat and poultry products, such as jerky or beef sticks.

(9) Foods manufactured according to 21 CFR Part 113.

(Indiana State Department of Health; 410 IAC 7-24-72)

410 IAC 7-24-73 “Reduced oxygen packaging” defined

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 73. (a) “Reduced oxygen packaging” means the following:

(1) The reduction of the amount of oxygen in a package by:

- (A) removing oxygen;
- (B) displacing oxygen and replacing it with another gas or combination of gases; or
- (C) otherwise controlling the oxygen content to a level below that normally found in the surrounding twenty-one percent (21%) oxygen atmosphere.

(2) A process as specified in subdivision (1) that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form.

(b) The term includes the following:

- (1) Vacuum packaging in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide.
- (2) Modified atmosphere packaging in which the atmosphere of a package of food is modified so that its compo-

sition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes any of the following:

- (A) Reduction in the proportion of oxygen.
- (B) Total replacement of oxygen.
- (C) An increase in the proportion of other gases, such as carbon dioxide or nitrogen.
- (3) Controlled atmosphere packaging in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

(Indiana State Department of Health; 410 IAC 7-24-73)

410 IAC 7-24-74 “Refuse” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 74. “Refuse” means solid waste not carried by water through the sewage system. (Indiana State Department of Health; 410 IAC 7-24-74)

410 IAC 7-24-75 “Regulatory authority” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 75. “Regulatory authority” means the local, state, or federal enforcement body or authorized representative having jurisdiction over a retail food establishment. (Indiana State Department of Health; 410 IAC 7-24-75)

410 IAC 7-24-76 “Reminder” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 76. “Reminder” means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens. (Indiana State Department of Health; 410 IAC 7-24-76)

410 IAC 7-24-77 “Restrict” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 77. “Restrict” means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with:

- (1) exposed food;
- (2) clean equipment, utensils, or linens; and
- (3) unwrapped single-service or single-use articles.

(Indiana State Department of Health; 410 IAC 7-24-77)

410 IAC 7-24-78 “Restricted use pesticide” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 78. “Restricted use pesticide” has the same meaning as when defined in law and rules of the office of the Indiana state chemist. (Indiana State Department of Health; 410 IAC 7-24-78)

410 IAC 7-24-79 “Retail food establishment” defined

Authority: IC 16-42-5-5
Affected: IC 12-10-15; IC 12-13-5; IC 16-18-2; IC 16-21-2; IC 16-25-11; IC 16-41-31; IC 16-42-5-4

Sec. 79. (a) “Retail food establishment” means an operation as follows that:

(1) Stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as the following:

- (A) A restaurant.
- (B) A satellite or catered feeding location.
- (C) A catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people.
- (D) A market.
- (E) A grocery store.
- (F) A convenience store.
- (G) A vending location.
- (H) A conveyance used to transport people.
- (I) An institution.
- (J) A food bank.
- (K) A commissary.
- (L) A cottage industry.
- (M) A hospice facility as defined in IC 16-25-11.
- (N) A health care facility as defined in IC 16-21-2.
- (O) A health facility as defined in IC 16-18-2.
- (P) A child care facility as defined in IC 12-13-5, such as the following:

(i) Licensed child care centers licensed under 470 IAC 3-4.7.

(ii) Licensed child care institutions licensed under 470 IAC 3-11, 470 IAC 3-12, and 470 IAC 3-13.

(iii) Registered child care ministries registered under 470 IAC 3-4.5.

(Q) An assisted living facility as defined in IC 12-10-15.

(2) Relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(b) The term includes the following:

(1) An element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority.

(2) An operation that is conducted in a:

- (A) mobile;
- (B) stationary;
- (C) temporary; or
- (D) permanent;

facility or location, where consumption is on or off the premises and regardless of whether there is a charge for the food.

(c) The term does not include the following:

- (1) An establishment that offers only prepackaged foods that are not potentially hazardous.
- (2) A produce stand that offers only whole, uncut fresh fruits and vegetables.
- (3) A food processing plant operated under IC 16-42-5.
- (4) A private home where food is prepared by a member of an organization that is operating under IC 16-42-5-4.
- (5) An area where food that is prepared as specified in subdivision (4) is sold or offered for human consumption.
- (6) A bed and breakfast establishment as defined and regulated under IC 16-41-31 and 410 IAC 7-15.5.
- (7) A private home that receives catered or home-delivered food.
- (8) A private home.

(Indiana State Department of Health; 410 IAC 7-24-79)

410 IAC 7-24-80 "Risk" defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 80. "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in food. (Indiana State Department of Health; 410 IAC 7-24-80)

410 IAC 7-24-81 "Safe material" defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 81. "Safe material" means any of the following:

- (1) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.
- (2) An additive that is used as specified in Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act.
- (3) Other materials that are not food or color additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

(Indiana State Department of Health; 410 IAC 7-24-81)

410 IAC 7-24-82 "Sanitization" defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 82. "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction

of five (5) logs, which is equal to a ninety-nine and nine hundred ninety-nine thousandths percent (99.999%) reduction of representative disease microorganisms of public health importance. (Indiana State Department of Health; 410 IAC 7-24-82)

410 IAC 7-24-83 "Sealed" defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 83. "Sealed" means free of cracks or other openings that allow the entry or passage of moisture. (Indiana State Department of Health; 410 IAC 7-24-83)

410 IAC 7-24-84 "Service animal" defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 84. "Service animal" means a professionally trained animal, such as a guide dog, signal dog, or other animal that provides assistance to an individual with a disability. (Indiana State Department of Health; 410 IAC 7-24-84)

410 IAC 7-24-85 "Servicing area" defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 85. "Servicing area" means an operating base location to which a mobile retail food establishment or transportation vehicle returns for such functions as the following:

- (1) Vehicle and equipment cleaning.
- (2) Discharging liquid or solid wastes.
- (3) Refilling water tanks and ice bins.
- (4) Boarding food.

(Indiana State Department of Health; 410 IAC 7-24-85)

410 IAC 7-24-86 "Sewage" defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 86. "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution. (Indiana State Department of Health; 410 IAC 7-24-86)

410 IAC 7-24-87 "Shellfish control authority" defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 87. "Shellfish control authority" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce. (Indiana State Department of Health; 410 IAC 7-24-87)

410 IAC 7-24-88 "Shellstock" defined

Proposed Rules

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 88. “Shellstock” means raw, in-shell molluscan shellfish. (*Indiana State Department of Health; 410 IAC 7-24-88*)

410 IAC 7-24-89 “Shiga toxin-producing Escherichia coli” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 89. “Shiga toxin-producing Escherichia coli” means any Escherichia coli capable of producing Shiga toxins (also called verocytotoxins or “Shiga-like” toxins). This includes, but is not limited to, Escherichia coli reported as serotype O157:H7, O157:NM, and O157:H-. (*Indiana State Department of Health; 410 IAC 7-24-89*)

410 IAC 7-24-90 “Shucked shellfish” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 90. “Shucked shellfish” means molluscan shellfish that have one (1) or both shells removed. (*Indiana State Department of Health; 410 IAC 7-24-90*)

410 IAC 7-24-91 “Single-service articles” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 91. “Single-service articles” means tableware, carry-out utensils, and other items, such as:

- (1) bags;
- (2) containers;
- (3) place mats;
- (4) stirrers;
- (5) straws;
- (6) toothpicks; and
- (7) wrappers;

that are designed and constructed for one (1) time, one (1) person use after which they are intended for discard. (*Indiana State Department of Health; 410 IAC 7-24-91*)

410 IAC 7-24-92 “Single-use articles” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 92. (a) “Single-use articles” means utensils and bulk food containers designed and constructed to be used once and discarded.

(b) The term includes items, such as:

- (1) wax paper;
- (2) butcher paper;
- (3) plastic wrap;
- (4) formed aluminum food containers;
- (5) jars;
- (6) plastic tubs or buckets;

- (7) bread wrappers;
- (8) pickle barrels;
- (9) ketchup bottles; and
- (10) number ten (10) cans;

that do not meet the materials, durability, strength, and cleanability specifications under sections 205, 217, and 229 of this rule for multiuse utensils. (*Indiana State Department of Health; 410 IAC 7-24-92*)

410 IAC 7-24-93 “Slacking” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 93. “Slacking” means the process of moderating the temperature of a food, such as allowing a food to gradually increase from a temperature of minus ten (10) degrees Fahrenheit to twenty-five (25) degrees Fahrenheit in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food, such as kale. (*Indiana State Department of Health; 410 IAC 7-24-93*)

410 IAC 7-24-94 “Smooth” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 94. “Smooth” means the following:

- (1) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of one hundred (100) grit number three (3) stainless steel.
- (2) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale.
- (3) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(*Indiana State Department of Health; 410 IAC 7-24-94*)

410 IAC 7-24-95 “Table-mounted equipment” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 95. “Table-mounted equipment” means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf. (*Indiana State Department of Health; 410 IAC 7-24-95*)

410 IAC 7-24-96 “Tableware” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 96. “Tableware” means:

- (1) eating, drinking, and serving utensils for table use, such as flatware, including:
 - (A) forks;
 - (B) knives; and

- (C) spoons;
- (2) hollowware including:
 - (A) bowls;
 - (B) cups;
 - (C) serving dishes; and
 - (D) tumblers; and
- (3) plates.

(Indiana State Department of Health; 410 IAC 7-24-96)

410 IAC 7-24-97 “Temperature measuring device” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 97. “Temperature measuring device” means:

- (1) a thermometer;
- (2) a thermocouple;
- (3) a thermistor; or
- (4) other device;

that indicates the temperature of food, air, or water.
(Indiana State Department of Health; 410 IAC 7-24-97)

410 IAC 7-24-98 “Temporary food establishment” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 98. “Temporary food establishment” means a retail food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration. *(Indiana State Department of Health; 410 IAC 7-24-98)*

410 IAC 7-24-99 “USDA” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 99. “USDA” means the United States Department of Agriculture. *(Indiana State Department of Health; 410 IAC 7-24-99)*

410 IAC 7-24-100 “Utensil” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 100. “Utensil” means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as the following:

- (1) Kitchenware or tableware that is multiuse, single-service, or single-use.
- (2) Gloves used in contact with food.
- (3) Food temperature measuring devices.
- (4) Probe-type price or identification tags used in contact with food.

(Indiana State Department of Health; 410 IAC 7-24-100)

410 IAC 7-24-101 “Variance” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 101. “Variance” means a written document issued by the department upon demonstration of good cause by the person requesting the variance that authorizes a waiver, modification, or deviation from one (1) or more of the state rules concerning food handling machinery or sanitary standards for the operation of food establishments. *(Indiana State Department of Health; 410 IAC 7-24-101)*

410 IAC 7-24-102 “Vending machine” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 102. “Vending machine” means a self-service device that, upon activation, such as through the insertion of a:

- (1) coin;
- (2) paper currency;
- (3) token;
- (4) card; or
- (5) key;

or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. *(Indiana State Department of Health; 410 IAC 7-24-102)*

410 IAC 7-24-103 “Vending machine location” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 103. “Vending machine location” means the:

- (1) room;
- (2) enclosure;
- (3) space; or
- (4) area;

where one (1) or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines. *(Indiana State Department of Health; 410 IAC 7-24-103)*

410 IAC 7-24-104 “Warewashing” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 104. “Warewashing” means the cleaning and sanitizing of food-contact surfaces of equipment and utensils. *(Indiana State Department of Health; 410 IAC 7-24-104)*

410 IAC 7-24-105 “Whole-muscle, intact beef” defined

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 105. “Whole-muscle, intact beef” means whole muscle beef that is not:

- (1) injected;
- (2) mechanically tenderized;
- (3) reconstructed; or
- (4) scored and marinated;

from which beef steaks may be cut. (*Indiana State Department of Health; 410 IAC 7-24-105*)

410 IAC 7-24-106 Public health protection

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 106. (a) The regulatory authority shall uniformly apply this rule to all retail food establishments in a reasonable manner that promotes its underlying purpose of safeguarding public health and ensuring that food is:

- (1) safe;
- (2) not misbranded;
- (3) unadulterated; and
- (4) honestly presented;

when offered to the consumer.

(b) In enforcing this rule, the regulatory authority shall assess existing facilities or equipment that was in use before the effective date of this rule based on the following considerations:

- (1) Whether the facilities or equipment is in good repair and capable of being maintained in a sanitary condition.
- (2) Whether food-contact surfaces comply with sections 205 through 213, 215, 216, and 240 of this rule.
- (3) Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with section 259 of this rule.
- (4) The existence of a documented agreement with the owner or operator of the retail food establishment that the facilities or equipment will be replaced or upgraded.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-106*)

410 IAC 7-24-107 Prerequisite for operation

Authority: IC 16-42-5-5

Affected: IC 16-42-1-6; IC 16-42-5

Sec. 107. (a) A person may not operate a retail food establishment without first having registered with the department as required under IC 16-42-1-6.

(b) A retail food establishment registered with a local health department or other regulatory authority shall be considered registered with the department under IC 16-42-1-6.

(c) To allow verification that the retail food establishment is constructed, equipped, and otherwise meets the requirements of this rule, the regulatory authority shall be notified of an intent to operate at least thirty (30) days before registering under this rule.

(d) From one (1) year of the effective date of this rule, the owner or operator of the retail food establishment shall

maintain at least one (1) copy of this rule on the premises at all times. Immediate electronic access to this rule shall be considered acceptable in meeting this requirement.

(e) For purposes of this section, a violation of subsections (a) through (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-107*)

410 IAC 7-24-108 Access allowed at reasonable times after due notice

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 108. (a) After the regulatory authority presents official credentials and expresses an intent to conduct an inspection, investigation, or to collect food samples, the person-in-charge shall allow the regulatory authority to determine if the retail food establishment is in compliance with this rule by allowing access to the establishment, and providing information and records specified in this rule and to which the regulatory authority is entitled according to law, during the retail food establishment's hours of operation and other reasonable times.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-108*)

410 IAC 7-24-109 Ceasing operations, reporting, and resumption of operations

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 109. (a) Except as specified in subsection (b), the owner or operator of the retail food establishment shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency, such as the following:

- (1) Fire.
- (2) Flood.
- (3) An extended interruption of electrical or water service.
- (4) A sewage backup.
- (5) A misuse of poisonous or toxic materials.
- (6) An onset of an apparent foodborne illness outbreak.
- (7) A gross insanitary occurrence or condition.
- (8) Other circumstance that may endanger public health.

(b) The owner or operator of a retail food establishment need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(c) If operations are discontinued as specified under this section or otherwise according to law, the retail food establishment shall obtain approval from the regulatory authority before resuming operations.

(d) For purposes of this section, a violation of subsection (a) is a critical item.

(e) For purposes of this section, a violation of subsection (b) or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-109*)

410 IAC 7-24-110 Requirement for facility and operating plans

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 110. (a) The owner or other authorized agent of an existing or proposed retail food establishment shall submit to the regulatory authority properly prepared plans and specifications for review before any of the following:

- (1) The construction of a retail food establishment.
- (2) The conversion of an existing structure for use as a retail food establishment.
- (3) The remodeling of a retail food establishment or a change of type of retail food establishment or food operation if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this rule.

The retail food establishment owner or operator should use the 2000 Food Establishment Plan Review Guide and the temporary retail food establishment owner or operator should use the 2000 Pre-Operational Guide for Temporary Retail Food Establishment Plan Review Guide, both as published by the U.S. Food and Drug Administration and the Conference for Food Protection, as a source for determining recommended equipment specifications and operational standards for retail food establishments/temporary retail food establishments.

(b) The plans and specifications shall be approved by the regulatory authority prior to construction and the operation of the retail food establishment.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-110*)

410 IAC 7-24-111 Contents and specifications for facility and operating plans

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 111. (a) The plans and specifications for a retail food establishment shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate compliance with this rule:

- (1) Intended menu.
- (2) Anticipated volume of food to be stored, prepared, and sold or served.
- (3) Proposed layout, mechanical schematics, construction

materials, and finish schedules.

(4) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications.

(5) Evidence that standard procedures that ensure compliance with this rule are developed or are being developed.

(6) Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion, or modification, and procedures for operating a retail food establishment.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-111*)

410 IAC 7-24-112 Food equipment; certification and classification

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 112. (a) Food equipment that is certified or classified for sanitation by an American National Standards Institute accredited certification program will be deemed to comply with sections 161, 205 through 213, 215 through 217, 219 through 226, 229 through 232, 253 through 256, 261 through 266, 271, 277 through 282, 288, 305 through 306, and 333 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-112*)

410 IAC 7-24-113 Mobile retail food establishment

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 113. (a) A mobile retail food establishment must be physically transported to a commissary or servicing area, or both, at least once daily for all:

- (1) supplies;
- (2) cleaning; and
- (3) servicing operations.

(b) A mobile retail food establishment shall comply with this rule except as otherwise provided in this section.

(c) A mobile retail food establishment serving only food prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this rule, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with this rule pertaining to the following:

- (1) The necessity of water and sewage systems.
- (2) The cleaning and sanitizing of equipment and utensils if the required equipment for cleaning and sanitizing

exists at the commissary.
However, frankfurters may be prepared and served from these units.

(d) A mobile retail food establishment shall provide only single-service articles for use by the consumer.

(e) A mobile retail food establishment requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and hand washing, in accordance with this rule.

(f) If liquid waste results from the operation of a mobile retail food establishment, the waste shall be stored in a permanently installed retention tank that is of at least fifteen percent (15%) larger capacity than the water supply tank as specified in section 372 of this rule. Liquid waste shall not be discharged from the retention tank when the mobile retail food establishment is being moved.

(g) For purposes of this section, a violation of subsection (a), (c), (e), or (f) is a critical item.

(h) For purposes of this section, a violation of subsection (b) or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-113*)

410 IAC 7-24-114 Variance

Authority: IC 16-42-5-5

Affected: IC 16-19-3-4.3; IC 16-42-5-5.2

Sec. 114. (a) An owner or operator of a retail food establishment may request a variance from one (1) or more of the sections in this rule as specified in IC 16-19-3-4.3 and IC 16-42-5-5.2.

(b) An owner or operator of a retail food establishment that requests a variance from one (1) or more requirements of this rule must complete a variance application provided by the department. The application information must adequately and completely address all areas of concern described in the department's "Policy for Processing Variance Requests".

(c) The department will process the variance request in accordance with the published and posted policy referenced in subsection (b).

(d) From the effective date of this rule, an owner or operator of a retail food establishment shall not commence implementation of a modification to this rule without first obtaining approval from the department.

(e) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical or noncritical item based on the

determination of whether or not the violation significantly contributes to food contamination, an illness, or an environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-114*)

410 IAC 7-24-115 Contents of a HACCP plan

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 115. (a) For a retail food establishment that is required under sections 114 and 195 of this rule to have a HACCP plan, the plan and specifications shall indicate the following:

(1) A categorization of the types of potentially hazardous foods that are specified in the menu, such as soups, sauces, salads, and bulk, solid foods, such as meat roasts, or other foods that are specified by the regulatory authority.

(2) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

(A) Ingredients, materials, and equipment used in the preparation of that food.

(B) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.

(3) A food employee and supervisory training plan that addresses the food safety issues of concern.

(4) A statement of standard operating procedures for the plan under consideration including clearly identifying the following:

(A) Each critical control point.

(B) The critical limits for each critical control point.

(C) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person-in-charge.

(D) The method and frequency for the person-in-charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points.

(E) Actions to be taken by the person-in-charge if the critical limits for each critical control point are not met.

(F) Records to be maintained by the person-in-charge to demonstrate that the HACCP plan is properly operated and managed.

(5) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-115*)

410 IAC 7-24-116 Preventing health hazards; provisions for conditions not addressed

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 116. (a) If necessary to protect against public health hazards or nuisances, the regulatory authority may temporarily impose specific requirements in addition to the requirements contained in this rule that are authorized by law.

(b) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the retail food establishment, and a copy shall be maintained in the regulatory authority's file for the retail food establishment.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-116*)

410 IAC 7-24-117 Assignment of supervision responsibility

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 117. (a) The owner or operator of a retail food establishment shall have a person-in-charge present at the retail food establishment during all hours of operation.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-117*)

410 IAC 7-24-118 Demonstration of knowledge

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 118. (a) Based on the risk of foodborne illness inherent to the retail food operation, during inspections and upon request, the person-in-charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the HACCP principles, and the requirements of this rule. The person-in-charge shall demonstrate this knowledge by either of the following:

(1) Having a certified food employee who has shown proficiency of required information through passing a test that is part of an accredited program, as per 410 IAC 7-22.

(2) If the retail food establishment is exempt from 410 IAC 7-22, the demonstration of knowledge shall be met by the following:

(A) Compliance with this rule by having no critical violation or violations during the current inspection.

(B) Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include the following:

(i) Describing the relationship between the prevention of foodborne disease and personal hygiene of a food

employee.

(ii) Explaining the responsibility of the person-in-charge for preventing transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease.

(iii) Describing the symptoms associated with the diseases that are transmissible through food.

(iv) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness.

(v) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish.

(vi) Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish.

(vii) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food.

(viii) Describing the relationship between the prevention of foodborne illness and the management and control of the following:

(AA) cross-contamination.

(BB) Hand contact with ready-to-eat foods.

(CC) Hand washing.

(DD) Maintaining the retail food establishment in a clean condition and in good repair.

(ix) Explaining the relationship between food safety and providing equipment that is as follows:

(AA) Sufficient in number and capacity.

(BB) Properly designed, constructed, located, installed, operated, maintained, and cleaned.

(x) Explaining correct procedures for cleaning and sanitizing utensils and food contact surfaces of equipment.

(xi) Identifying the source of water used and measures taken to ensure that it remains protected from contamination, such as providing protection from backflow and precluding the creation of cross connections.

(xii) Identifying poisonous or toxic materials in the retail food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law.

(xiii) Identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with this rule.

(xiv) Explaining the details of how the person-in-charge and food employees comply with the HACCP plan if a plan is required by the law, this rule, or an agreement between the regulatory authority and the

establishment.

(xv) Explaining the responsibilities, rights, and authorities assigned by this rule to the:

- (AA) food employee;
- (BB) person-in-charge; and
- (CC) regulatory authority.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-118*)

410 IAC 7-24-119 Duties of the person-in-charge

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 119. (a) When applicable, the person-in-charge of the retail food establishment shall ensure the following:

- (1) Retail food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under section 423 of this rule.
- (2) Persons unnecessary to the retail food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person-in-charge if steps are taken to ensure that:
 - (A) exposed food;
 - (B) clean equipment, utensils, and linens; and
 - (C) unwrapped single-service and single-use articles; are protected from contamination.
- (3) Employees and other persons, such as delivery and maintenance persons and pesticide applicators, entering the food preparation, food storage, and warewashing areas comply with this rule.
- (4) Employees are effectively cleaning their hands, by routinely monitoring the employees' hand washing.
- (5) Employees are visibly observing foods as they are received to determine that they are:
 - (A) from approved sources;
 - (B) delivered at the required temperatures;
 - (C) protected from contamination;
 - (D) unadulterated; and
 - (E) accurately presented;

by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt.

- (6) Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under sections 235 and 254 of this rule.
- (7) Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within four (4) hours, through daily

oversight of the employees' routine monitoring of food temperatures during cooling.

(8) Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under section 196 of this rule that the food is not cooked sufficiently to ensure its safety.

(9) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing and chemical concentration, pH, temperature, and exposure time for chemical sanitizing.

(10) Consumers are notified that clean tableware is to be used when they return to self-service areas, such as salad bars and buffets, as specified under section 249 of this rule.

(11) Employees are preventing cross-contamination of ready-to-eat food from unwashed hands and are properly using suitable utensils, such as:

- (A) deli tissue;
 - (B) spatulas;
 - (C) tongs;
 - (D) single-use gloves; or
 - (E) dispensing equipment;
- when such items can be used.

(12) Employees are properly trained in food safety as it relates to their assigned duties.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-119*)

410 IAC 7-24-120 Responsibility to require reporting by food employees and applicants

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 120. (a) The owner or operator of a retail food establishment shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person-in-charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person-in-charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified under subdivision (3), if the food employee or applicant:

- (1) is diagnosed with an illness due to:
 - (A) *Salmonella* spp.;
 - (B) *Shigella* spp.;
 - (C) Shiga toxin-producing *Escherichia coli*; or
 - (D) hepatitis A virus;
- (2) has a symptom caused by illness, infection, or other source that is:
 - (A) associated with an acute gastrointestinal illness,

such as:

- (i) diarrhea;
- (ii) fever;
- (iii) vomiting;
- (iv) jaundice; or
- (v) sore throat with fever;

(B) a lesion containing pus, such as a boil or infected wound that is open or draining and is on:

- (i) the hands or wrists unless an impermeable cover, such as a finger cot or stall, protects the lesion and a single-use glove is worn over the impermeable cover;
- (ii) exposed portions of the arms unless the lesion is protected by an impermeable cover; or
- (iii) other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;

(3) had a past illness from an infectious agent specified under subdivision (1); or

(4) meets one (1) or more of the following high-risk conditions, such as:

(A) Being suspected of causing, or being exposed to, a confirmed disease outbreak caused by *Salmonella* spp., *Shigella* spp., Shiga toxin-producing *Escherichia coli*, or hepatitis A virus because the food employee or applicant:

- (i) prepared food implicated in the outbreak;
- (ii) consumed food implicated in the outbreak; or
- (iii) consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent.

(B) Living in the same household as a person who is diagnosed with a disease caused by *Salmonella* spp., *Shigella* spp., Shiga toxin-producing *Escherichia coli*, or hepatitis A virus.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-120*)

410 IAC 7-24-121 Exclusions and restrictions

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 121. (a) The person-in-charge shall do the following:

(1) Exclude a food employee from a retail food establishment if the food employee is diagnosed with an infectious agent specified under section 120(a)(1) of this rule.

(2) Except as specified under subdivision (3) or (4), restrict a food employee from working with exposed clean equipment, utensils, and linens and unwrapped single-service and single-use articles in a retail food establishment if the food employee is:

- (A) suffering from a symptom specified under section 120(a)(2) of this rule; or
- (B) not experiencing a symptom of acute gastroenteritis specified under section 120(a)(2)(A) of this rule but has

a stool that yields a specimen culture that is positive for *Salmonella* spp., *Shigella* spp., or Shiga toxin-producing *Escherichia coli*.

(3) If the population served is a highly susceptible population, exclude a food employee who:

(A) is experiencing a symptom of acute gastrointestinal illness specified under section 120(a)(2)(A) of this rule and meets a high-risk condition specified under section 120(a)(4) of this rule;

(B) is not experiencing a symptom of acute gastroenteritis specified under section 120(a)(2)(A) of this rule but has a stool that yields a specimen culture that is positive for *Salmonella* spp., *Shigella* spp., or Shiga toxin-producing *Escherichia coli*;

(C) had a past illness from *Salmonella typhi* without three (3) successive negative stool cultures; or

(D) had a past illness from *Salmonella* spp., *Shigella* spp., or Shiga toxin-producing *Escherichia coli* without two (2) successive negative stool cultures.

(4) For a food employee who is jaundiced, if the onset of jaundice occurred within the last seven (7) calendar days, exclude the food employee from the food establishment.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-121*)

410 IAC 7-24-122 Removal of exclusions and restrictions

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 122. (a) The person-in-charge may remove an exclusion specified under section 121(a)(1) of this rule if:

(1) the person-in-charge obtains approval from the regulatory authority; and

(2) the person excluded as specified under section 121(a)(1) of this rule provides to the person-in-charge written medical documentation from a physician licensed to practice medicine, a nurse practitioner, or a physician assistant that specifies that the excluded person may work in an unrestricted capacity in a retail food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in section 127 of this rule.

(b) The person-in-charge may remove a restriction specified under:

(1) section 121(a)(2)(A) of this rule if the restricted person:

(A) is free of the symptoms specified under section 121(a)(2) of this rule and no foodborne illness occurs that may have been caused by the restricted person;

(B) is suspected of causing foodborne illness but:

- (i) is free of the symptoms specified under section 121(a)(2) of this rule; and

(ii) provides written medical documentation from a physician licensed to practice medicine, a nurse practitioner, or a physician assistant stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness as specified in section 127 of this rule; or

(C) provides written medical documentation from a physician licensed to practice medicine, a nurse practitioner, or physician assistant stating that the symptoms experienced result from a chronic noninfectious condition, such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or

(2) section 121(a)(2)(B) of this rule if the restricted person provides written medical documentation from a physician licensed to practice medicine, a nurse practitioner, or physician assistant according to the criteria specified in section 127 of this rule that indicates the stools are free of *Salmonella* spp., *Shigella* spp., or Shiga toxin-producing *Escherichia coli*, whichever is the infectious agent of concern.

(c) The person-in-charge may remove an exclusion specified under section 121(a)(3) of this rule if the excluded person provides written medical documentation from a physician licensed to practice medicine, a nurse practitioner, or physician assistant:

(1) who specifies that the person is free of:

(A) the infectious agent of concern as specified in section 127 of this rule; or

(B) jaundice as specified under subsection (d) if hepatitis A virus is the infectious agent of concern; or

(2) if the person is excluded under section 121(a)(3)(A) of this rule, stating that the symptoms experienced result from a chronic noninfectious condition, such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

(d) The person-in-charge may remove an exclusion specified under section 121(a)(4)(A) of this rule if:

(1) at least seven (7) days have passed since the onset of jaundice; or

(2) at least fourteen (14) days have passed since the onset of symptoms if no jaundice occurred.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-122*)

410 IAC 7-24-123 Responsibility of a food employee or an applicant to report to the person-in-charge

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 123. (a) A food employee or a person who applies for a job as a food employee shall do the following:

(1) In a manner specified under section 120 of this rule, report to the person-in-charge the information specified under section 120 of this rule.

(2) Comply with exclusions and restrictions that are specified under section 121 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-123*)

410 IAC 7-24-124 Obtaining information: personal history of illness, medical examination, and specimen analysis

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 124. (a) The regulatory authority shall act when it has reasonable cause to believe that a food employee:

(1) has possibly transmitted disease;

(2) may be infected with a disease in a communicable form that is transmissible through food;

(3) may be a carrier of infectious agents that cause a disease that is transmissible through food; or

(4) is affected with:

(A) a boil;

(B) an infected wound; or

(C) an acute respiratory infection.

(b) The regulatory authority shall act to secure a confidential medical history of the food employee suspected of transmitting disease or making other investigations as deemed appropriate. The regulatory authority shall also require appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee and other employees.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-124*)

410 IAC 7-24-125 Regulatory authority restriction or exclusion of food employee

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 125. (a) Based on the findings of an investigation related to a food employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected employee or retail food establishment instituting one (1) or more of the following control measures:

(1) Restricting the employee's services to specific areas and tasks in a retail food establishment that present no risk of transmitting the disease.

(2) Excluding the employee from a retail food establishment.

(3) Closing the retail food establishment in accordance with law.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-125*)

410 IAC 7-24-126 Restriction or exclusion order

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 126. (a) Based on the findings of the investigation as specified in section 124 of this rule and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the owner or operator of the retail food establishment without prior warning, notice of a hearing, or a hearing if the order states the following:

- (1) The reasons for the restriction or exclusion that is ordered.
- (2) The evidence that the food employee or the owner or operator of the retail food establishment shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated.
- (3) That the suspected food employee or the owner or operator of the retail food establishment may request an appeal hearing by submitting a timely request as provided in law.
- (4) The name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-126*)

410 IAC 7-24-127 Release of a food employee from restriction or exclusion

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 127. (a) The regulatory authority shall release a food employee from restriction or exclusion according to the following conditions:

- (1) If the employee's stools are negative for *Salmonella typhi* based on testing of at least three (3) consecutive stool specimen cultures that are taken:
 - (A) not earlier than one (1) month after onset;
 - (B) at least forty-eight (48) hours after discontinuance of antibiotics; and
 - (C) at least twenty-four (24) hours apart.
- (2) If one (1) of the cultures taken as specified in subdivision (1) is positive, repeat cultures are taken at intervals of one (1) month until at least three (3) consecutive negative stool specimen cultures are obtained.
- (3) If the employee's stools are negative for *Salmonella*

spp., *Shigella* spp., or Shiga toxin-producing *Escherichia coli* based on testing of two (2) consecutive stool specimen cultures that are taken:

- (A) not earlier than forty-eight (48) hours after discontinuance of antibiotics; and
 - (B) at least twenty-four (24) hours apart.
- (4) For a food employee who was infected with hepatitis A virus if:
- (A) at least seven (7) days have passed since the onset of jaundice;
 - (B) at least fourteen (14) days have passed since the onset of symptoms, if no jaundice occurred; or
 - (C) at least two (2) blood tests show falling liver enzymes.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-127*)

410 IAC 7-24-128 Hand cleaning and drying procedure

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 128. (a) Food employees shall, except as specified in section 343(c) of this rule, clean their hands and exposed portions of their arms with a cleaning compound at a hand washing sink that is equipped as specified under section 342(a) of this rule by vigorously rubbing together the surfaces of their lathered hands and arms for at least twenty (20) seconds in water having a temperature of at least one hundred (100) degrees Fahrenheit and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers. A nail brush shall be used when provided.

(b) Food employees shall dry their hands utilizing the provisions under section 347 of this rule. The use of a common towel is prohibited.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-128*)

410 IAC 7-24-129 When to wash hands

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 129. (a) Food employees shall clean their hands and exposed portions of their arms as specified under section 128 of this rule immediately before engaging in food preparation, including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and the following:

- (1) After touching bare human body parts other than clean hands and clean, exposed portions of arms.
- (2) After using the toilet room.

- (3) After caring for or handling service animals or aquatic animals as specified in section 435(b) of this rule.
- (4) After coughing, sneezing, or using a handkerchief or disposable tissue.
- (5) After drinking, other than as specified in section 136(b) of this rule, using tobacco, or eating.
- (6) After handling soiled surfaces, equipment, or utensils.
- (7) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks.
- (8) When switching between working with raw food and working with ready-to-eat food.
- (9) Before touching food or food-contact surfaces.
- (10) Before placing gloves on hands.
- (11) After engaging in other activities that contaminate the hands.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-129*)

410 IAC 7-24-130 Where to wash hands

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 130. (a) Food employees shall clean their hands in a hand washing sink or approved automatic hand washing facility and may not clean their hands in a sink used for food preparation or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-130*)

410 IAC 7-24-131 Hand sanitizers

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 131. (a) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall be as follows:

- (1) Comply with one (1) of the following:
 - (A) Be an approved drug that is listed in the FDA publication Approved Drug Products with Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness.
 - (B) Have active antimicrobial ingredients that are listed in the FDA monograph for OTC Health-Care Antiseptic Drug Products as an antiseptic hand wash.
- (2) Consist of components that are one (1) of the following:
 - (A) Listed for such use in contact with food in 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers.
 - (B) Exempt from regulation as food additives under 21

CFR 170.39 - Threshold of regulation for substances used in food-contact articles.

(C) Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug and Cosmetic Act (FFDCA).

(D) Permitted for such use by an effective Food Contact Substance Notification as defined by paragraph 409(h) of the FFDCA and listed in FDA's Inventory of Effective Premarket Notifications for Food Contact Substances.

(3) Be applied only to hands that are cleaned as specified under section 172 of this rule.

(b) If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under subsection (a)(2), use shall be:

- (1) followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or
- (2) limited to situations that involve no direct contact with food by the bare hands.

(c) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least one hundred (100) milligrams per liter chlorine.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-131*)

410 IAC 7-24-132 Personal cleanliness

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 132. (a) Food employees shall keep their hands and exposed portions of their arms clean.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-132*)

410 IAC 7-24-133 Hand and arm maintenance

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 133. (a) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(b) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails while working with exposed food.

(c) If a lesion is present on the arms or hands, a food employee shall wear the following:

- (1) An impermeable covering, such as a bandage and a single-use glove over the lesion, on the hands or wrist.
- (2) A long sleeved shirt on other exposed portions of the

arm where a bandaged lesion may be present.

(d) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item.

(e) For purposes of this section, a violation of subsection (c) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or an environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-133*)

410 IAC 7-24-134 Jewelry prohibition

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 134. (a) While preparing food, a food employee shall not wear jewelry, including medical jewelry and watches, on their arms and hands. This section does not apply to a plain ring, such as a wedding band.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-134*)

410 IAC 7-24-135 Clean condition of outer clothing

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 135. (a) Food employees shall wear clean outer clothing to prevent contamination of the following:

- (1) Food.
- (2) Equipment.
- (3) Utensils.
- (4) Linens.
- (5) Single-service and single-use articles.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-135*)

410 IAC 7-24-136 Eating, drinking, or using tobacco

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 136. (a) Except as specified in subsection (b), an employee shall chew gum, eat and drink food, or use any form of tobacco only in designated areas where the contamination of:

- (1) exposed food;
- (2) clean equipment, utensils, and linens;
- (3) unwrapped single-service and single-use articles; or
- (4) other items needing protection;

cannot result.

(b) A food employee may drink from a closed beverage container if the container is handled in a manner that prevents contamination of the following:

- (1) The employee's hands.
- (2) The container.
- (3) Exposed food.
- (4) Clean equipment, utensils, and linens.
- (5) Unwrapped single-service and single-use articles.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-136*)

410 IAC 7-24-137 Discharges from the eyes, nose, and mouth

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 137. (a) Food employees experiencing persistent sneezing, coughing, or a runny nose or when there are any other bodily discharges from the eyes, nose, or mouth may not work with the following:

- (1) Exposed food.
- (2) Clean equipment, utensils, and linens.
- (3) Unwrapped single-service or single-use articles.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-137*)

410 IAC 7-24-138 Effectiveness of hair restraint

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 138. (a) Except as provided in subsection (b), food employees shall wear hair restraints, such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting:

- (1) exposed food;
- (2) clean equipment, utensils, and linens; and
- (3) unwrapped single-service and single-use articles.

(b) This section does not apply to food employees, such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff, if they present a minimal risk of contaminating:

- (1) exposed food;
- (2) clean equipment, utensils, and linens; and
- (3) unwrapped single-service and single-use articles.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-138*)

410 IAC 7-24-139 Food condition

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 139. (a) Food shall be safe, unadulterated, and, as

specified under section 140 of this rule, honestly presented.

(b) Food shall not be misbranded.

(c) For purposes of this section, a violation of subsection (a) is a critical item.

(d) For purposes of this section, a violation of subsection (b) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or an environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-139*)

410 IAC 7-24-140 Honest presentation of food

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 140. (a) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(b) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-140*)

410 IAC 7-24-141 Discarding or reconditioning of unsafe, misbranded, adulterated, or contaminated food

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 141. (a) A food that is unsafe, adulterated, misbranded, or not honestly presented as specified under section 140 of this rule shall be reconditioned according to an approved procedure or discarded.

(b) Food that is not from an approved source as specified under section 142, 143, 147, 154, 155, 164, or 165 of this rule shall be discarded.

(c) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under section 121 of this rule shall be discarded.

(d) Food that is contaminated by food employees, consumers, or other persons through contact with soiled hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

(e) For purposes of this section, a violation of subsection (a) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes

to food contamination, an illness, or an environmental health hazard.

(f) For purposes of this section, a violation of subsection (b), (c), or (d) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-141*)

410 IAC 7-24-142 Food sources

Authority: IC 16-42-5-5

Affected: IC 16-42-1; IC 16-42-2

Sec. 142. (a) Food shall be obtained from sources that comply with law at least equivalent to Indiana law.

(b) Food prepared in a private home may not be used or offered for human consumption in a retail food establishment.

(c) Packaged food shall be labeled as specified:

- (1) in law, including IC 16-42-1, IC 16-41-2, 21 CFR 101, 9 CFR 317, and 9 CFR 381 Subpart N; and
- (2) under sections 156 and 157 of this rule.

(d) Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified in section 182(d) of this rule may be offered for sale or service if they are:

- (1) obtained from a supplier that freezes the fish as specified under section 164 of this rule; or
- (2) frozen on the premises as specified under section 162 of this rule;

and records are retained as specified under section 163 of this rule.

(e) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in section 182(c) of this rule shall be:

- (1) obtained from a food processing plant that packages the steaks and labels them to indicate that they meet the definition of whole-muscle, intact beef; or
- (2) if individually cut in a retail food establishment:
 - (A) cut from whole-muscle, intact beef that is labeled by a food processing plant to indicate that the beef meets the definition of whole-muscle, intact beef;
 - (B) prepared so they remain intact; and
 - (C) if packaged for undercooking in a retail food establishment, labeled to indicate that they meet the definition of whole-muscle, intact beef.

(f) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(l) and 9 CFR 381.125(b).

(g) For purposes of this section, a violation of subsections

(a), (b), (c)(1), (d), (e), and (f) is a critical item.

(h) For purposes of this section, a violation of subsection (c)(2) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or an environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-142*)

410 IAC 7-24-143 Food in a hermetically sealed container
 Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 143. (a) Food in a hermetically sealed container shall be obtained from a:

- (1) food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant; or
- (2) retail food establishment engaged in activities of a food processing plant for retail sale such as acidified foods or low-acid foods, meeting the same requirements as a food processing plant.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-143*)

410 IAC 7-24-144 Packaging integrity
 Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 144. (a) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-144*)

410 IAC 7-24-145 Accurate representation of packaged food using standards of identity
 Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 145. (a) Packaged food shall comply with standard of identity requirements in 21 CFR 131 through 21 CFR 169, 9 CFR 319, and the general requirements in 21 CFR 130 and 9 CFR 319, Subpart A.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-145*)

410 IAC 7-24-146 Food labels
 Authority: IC 16-42-5-5
 Affected: IC 16-42-1; IC 16-42-2

Sec. 146. (a) Food packaged in a retail food establishment shall be labeled as specified in law, including the following:

- (1) IC 16-42-1.
- (2) IC 16-42-2.
- (3) 410 IAC 7-5.
- (4) 21 CFR 101.
- (5) 9 CFR 317.

(b) Label information shall include the following:

- (1) The common name of the food or, absent a common name, an adequately descriptive identity statement.
- (2) If made from two (2) or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives if contained in the food.
- (3) An accurate declaration of the quantity of contents.
- (4) The name and place of business of the manufacturer, packer, or distributor.
- (5) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

(c) Except as specified in subsection (d), bulk, unpackaged food not intended for immediate consumption that is available for consumer self-dispensing or that is portioned to consumer specifications shall be prominently labeled with either of the following information in plain view of the consumer:

- (1) The manufacturer's or processor's label that was provided with the food.
- (2) A card, sign, or other method of notification that includes the information specified under subsection (b)(1), (b)(2), and (b)(4).

(d) Bulk unpackaged food need not be labeled if:

- (1) a health, nutrient content, or other claim is not made; or
- (2) the food is manufactured or prepared on the premises of the retail food establishment.

(e) Retail food establishment or manufacturers' dating information on foods may not be concealed or altered.

(f) For purposes of this section, a violation of subsections (a) through (e) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-146*)

410 IAC 7-24-147 Fluid milk and milk products
 Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 147. (a) Fluid milk and milk products shall be obtained from sources that comply with Grade A standards as specified in law.

(b) For purposes of this section, a violation of subsection

(a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-147*)

410 IAC 7-24-148 Bulk milk

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 148. (a) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one (1) inch protruding from the chilled dispensing head.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-148*)

410 IAC 7-24-149 Eggs and milk products; pasteurized

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 149. (a) Liquid, frozen, and dry eggs and egg products shall be pasteurized.

(b) Fluid and dry milk and milk products complying with Grade A standards as specified in law shall be obtained pasteurized.

(c) Frozen milk products, such as ice cream, shall be pasteurized as specified in 21 CFR 135.

(d) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in 21 CFR 133.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-149*)

410 IAC 7-24-150 Shell eggs

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 150. (a) Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for United States Consumer Grade B as specified in 7 CFR 56, 9 CFR 590, United States Standards, Grades, and Weight classes for Shell Eggs (AMS 56.200 et seq.), and 370 IAC.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-150*)

410 IAC 7-24-151 Pasteurized eggs; substitute for raw shell eggs for certain recipes

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 151. (a) Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods,

such as caesar salad, hollandaise or béarnaise sauce, mayonnaise, and egg-fortified beverages that are not:

- (1) cooked as specified under section 182(a)(1) or 182(a)(2) of this rule; or
- (2) included in section 182(d) of this rule.

(b) For purposes of section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-151*)

410 IAC 7-24-152 Juice treated

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 152. (a) Prepackaged juice shall:

- (1) be obtained from a processor who has established and is utilizing a HACCP system as specified in 21 CFR Part 120;
- (2) be obtained already pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR Part 120.24; or
- (3) bear a warning label as specified in 21 CFR 101.17(g).

(b) Juice packaged in a retail food establishment shall be:

- (1) treated under a HACCP plan as specified in subsection 115(a)(2) through 115(a)(5) of this rule to attain a 5-log reduction, which is equal to a ninety-nine and nine hundred ninety-nine thousandths percent (99.999%) reduction, of the most resistant microorganism of public health significance; or
- (2) labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance as specified:
 - (A) under section 175 of this rule; and
 - (B) in 21 CFR 101.17(g) with the phrase, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-152*)

410 IAC 7-24-153 Pasteurized food and prohibited food

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 153. (a) The following apply in a retail food establishment that serves a highly susceptible population:

- (1) The following criteria apply to juice:
 - (A) For purposes of this subdivision only, children who are nine (9) years of age or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations.

(B) Prepackaged juice or a prepackaged beverage containing juice that bears a warning label as specified in 21 CFR 101.17(g) Food Labeling or packaged juice or beverage containing juice that bears a warning label as specified under section 152(b)(2) of this rule may not be served or offered for sale.

(C) Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in section 115(a)(2) through 115(a)(5) of this rule and as specified under 21 CFR 120.24 Process controls.

(2) Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of the following:

(A) Foods, such as the following:

- (i) Caesar salad.
- (ii) Hollandaise or béarnaise sauce.
- (iii) Mayonnaise.
- (iv) Egg-fortified beverages.

(B) Except as specified in subdivision (5), recipes in which more than one (1) egg is broken and the eggs are combined.

(3) The following foods may not be served or offered for sale in a ready-to-eat form:

(A) Raw animal foods, such as the following:

- (i) Raw fish.
- (ii) Raw-marinated fish.
- (iii) Raw molluscan shellfish.
- (iv) Steak tartare.

(B) A partially cooked animal food, such as the following:

- (i) Lightly cooked fish.
- (ii) Rare meat.
- (iii) Soft-cooked eggs that are made from raw shell eggs.
- (iv) Meringue.

(C) Raw seed sprouts.

(4) Food employees may not contact ready-to-eat food as specified under section 171(b) of this rule.

(5) Subdivision (2)(B) does not apply if:

(A) the raw eggs are combined:

- (i) immediately before cooking for one (1) consumer's serving at a single meal, cooked as specified under section 182(a)(1) of this rule, and served immediately, such as an omelet, soufflé, or scrambled eggs; or
- (ii) as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

(B) the preparation of the food is conducted under a HACCP plan that:

- (i) identifies the food to be prepared;
- (ii) prohibits contacting ready-to-eat food with bare hands;
- (iii) includes specifications and practices that ensure

that *Salmonella Enteritidis* growth is controlled before and after cooking, and *Salmonella Enteritidis* is destroyed by cooking the eggs according to the temperature and time specified in section 182(a)(2) of this rule;

(iv) contains the information specified under section 115(a)(4) of this rule including procedures that control cross-contamination of ready-to-eat food with raw eggs and delineate cleaning and sanitization procedures for food-contact surfaces; and

(v) describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-153*)

410 IAC 7-24-154 Fish

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 154. (a) Fish that are received for sale or service shall be:

(1) commercially and legally produced, caught, or harvested; or

(2) approved by the department for sale or service.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-154*)

410 IAC 7-24-155 Molluscan shellfish

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 155. (a) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(b) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

(c) Molluscan shellfish that are recreationally caught may not be received for sale or service.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-155*)

410 IAC 7-24-156 Shucked shellfish; packaging and identification

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Proposed Rules

Sec. 156. (a) Raw shucked shellfish shall be obtained in nonreturnable packages that bear a legible label that identifies the:

- (1) name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; and
- (2) “sell by” date for packages with a capacity of less than one-half ($\frac{1}{2}$) gallon or the date shucked for packages with a capacity of one-half ($\frac{1}{2}$) gallon or more.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-156*)

410 IAC 7-24-157 Shellstock identification

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 157. (a) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list the following:

(1) Except as specified under subsection (b), on the harvester’s tag or label, the following information in the following order:

(A) The harvester’s identification number that is assigned by the shellfish control authority.

(B) The date of harvesting.

(C) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested.

(D) The type and quantity of shellfish.

(E) The following statement in bold, capitalized type: “This tag is required to be attached until container is empty or retagged and thereafter kept on file for ninety (90) days.”.

(2) Except as specified in subsection (c), on each dealer’s tag or label, the following information in the following order:

(A) The dealer’s name and address and the certification number assigned by the shellfish control authority.

(B) The original shipper’s certification number, including the abbreviation of the name of the state or country in which the shellfish are harvested.

(C) The same information as specified for a harvester’s tag under subdivision (1)(B) through (1)(D).

(D) The following statement in bold, capitalized type: “This tag is required to be attached until container is empty and thereafter kept on file for ninety (90) days.”.

(b) A container of shellstock that does not bear a tag or

label or that bears a tag or label that does not contain all the information as specified under subsection (a) shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR 1240.60(d).

(c) If a place is provided on the harvester’s tag or label for a dealer’s name, address, and certification number, the dealer’s information shall be listed first.

(d) If the harvester’s tag or label is designed to accommodate each dealer’s identification as specified under subsection (a)(2)(A) and (a)(2)(B), individual dealer tags or labels need not be provided.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-157*)

410 IAC 7-24-158 Shellstock condition

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 158. (a) When received by a retail food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-158*)

410 IAC 7-24-159 Molluscan shellfish original container

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 159. (a) Except as specified in subsections (b) and (c), molluscan shellfish shall not be removed from the container in which they are received other than immediately before sale or preparation for service.

(b) Shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if the:

(1) source of the shellstock on display is identified as specified under section 157 of this rule and recorded as specified under section 160 of this rule; and

(2) shellstock are protected from contamination.

(c) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer’s request if the:

(1) labeling information for the shellfish on display as specified under section 156 of this rule is retained and correlated to the date when, or dates during which, the

shellfish are sold or served; and
 (2) shellfish are protected from contamination.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-159*)

410 IAC 7-24-160 Shellstock; maintaining identification

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 160. (a) Except as specified under subsection (b)(2), shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.

(b) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for ninety (90) calendar days from the date the container is emptied by using:

- (1) a record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and
- (2) only one (1) tagged or labeled container at a time if shellstock are removed from their tagged or labeled container.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-160*)

410 IAC 7-24-161 Molluscan shellfish tanks

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 161. (a) Except as specified under subsection (b), molluscan shellfish life support system display tanks may not be used to display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.

(b) Molluscan shellfish life support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in compliance with a HACCP plan to ensure the following:

- (1) Water used with fish other than molluscan shellfish does not flow into the molluscan tank.
- (2) The safety and quality of the shellfish as they were received are not compromised by the use of the tank.
- (3) The identity of the source of the shellstock is retained as specified under section 160 of this rule.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-161*)

410 IAC 7-24-162 Parasite destruction

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 162. (a) Except as specified in subsection (b), before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

- (1) minus four (4) degrees Fahrenheit or below for one hundred sixty-eight (168) hours (seven (7) days) in a freezer; or
- (2) minus thirty-one (31) degrees Fahrenheit or below for fifteen (15) hours in a blast freezer.

(b) If the fish are tuna of the species:

- (1) *Thunnus alalunga*;
- (2) *Thunnus albacares* (Yellowfin tuna);
- (3) *Thunnus atlanticus*;
- (4) *Thunnus maccoyii* (Bluefin tuna, Southern);
- (5) *Thunnus obesus* (Bigeye tuna); or
- (6) *Thunnus thynnus* (Bluefin tuna, Northern);

the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under subsection (a).

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-162*)

410 IAC 7-24-163 Records; creation and retention

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 163. (a) Except as specified in section 162(b) of this rule and subsection (b), if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person-in-charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the retail food establishment for ninety (90) calendar days beyond the time of service or sale of the fish.

(b) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under section 162 of this rule may substitute for the records specified under subsection (a).

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-163*)

410 IAC 7-24-164 Wild mushrooms

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 164. (a) Except as specified in subsection (b), mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by a mushroom identification expert.

(b) This section does not apply to the following:

(1) Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation.

(2) Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-164*)

410 IAC 7-24-165 Game animals

Authority: IC 16-42-5-5

Affected: IC 15-2.1-24; IC 16-42-5

Sec. 165. (a) If game animals are received for sale or service they shall be slaughtered and processed under a state or federal inspection program with requirements that are at least equal to IC 15-2.1-24.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-165*)

410 IAC 7-24-166 Specifications for receiving temperatures of food

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 166. (a) Except as specified in subsection (b), refrigerated, potentially hazardous food shall be at a temperature of forty-one (41) degrees Fahrenheit or below when received.

(b) If a temperature other than forty-one (41) degrees Fahrenheit for a potentially hazardous food is specified in law governing its distribution, such as laws governing milk, molluscan shellfish, and shell eggs, the food may be received at the specified temperature.

(c) Potentially hazardous food that is cooked to a temperature and for a time specified under sections 182, 183, and 186 of this rule and received hot shall be at a temperature of one hundred thirty-five (135) degrees Fahrenheit or above.

(d) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.

(e) Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.

(f) For purposes of this section, a violation of subsections (a) through (e) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-166*)

410 IAC 7-24-167 Food additives

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 167. (a) Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170 through 21 CFR 180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181 through 21 CFR 186, substances that exceed amounts specified in 9 CFR 424.21(b) food ingredients and source of radiation, or pesticide residues that exceed provisions specified in 40 CFR 185.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-167*)

410 IAC 7-24-168 Protection from unapproved food or color additives

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 168. (a) Food shall be protected from contamination that may result from the addition of unsafe or unapproved:

- (1) food or color additives; and
- (2) levels of approved food and color additives.

(b) A food employee may not:

- (1) apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₁; or
- (2) serve or sell food specified under subdivision (1) that is treated with sulfiting agents before receipt by the owner or operator of the retail food establishment, except that grapes need not meet this subdivision.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-168*)

410 IAC 7-24-169 Ice

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 169. (a) Ice for use as a food or a cooling medium shall be made from drinking water.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-169*)

410 IAC 7-24-170 Ice used as exterior coolant; prohibited as ingredient

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 170. (a) After use as a medium for cooling the exterior surfaces of:

- (1) food, such as melons or fish;
 - (2) packaged foods, such as canned beverages; or
 - (3) cooling coils and tubes of equipment;
- ice may not be used as food.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-170*)

410 IAC 7-24-171 Preventing contamination from hands

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 171. (a) Food employees shall wash their hands as specified under section 128 of this rule.

(b) Except when washing fruits and vegetables as specified in section 175 of this rule, or when otherwise approved through a variance, food employees shall not contact exposed, ready-to-eat food with hands that have not been washed as specified in sections 129 and 130 of this rule and shall use suitable utensils, such as the following:

- (1) Deli tissue.
- (2) Spatulas.
- (3) Tongs.
- (4) Single-use gloves.
- (5) Dispensing equipment.

(c) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(d) For purposes of this section, a violation of subsection (a) or (b) is a critical item.

(e) For purposes of this section, a violation of subsection (c) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or an environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-171*)

410 IAC 7-24-172 Preventing contamination when tasting

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 172. (a) A food employee may not reuse a utensil once it has been used to taste food that is to be sold or served.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-172*)

410 IAC 7-24-173 Packaged and unpackaged food; separation, packaging, and segregation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 173. (a) Food shall be protected from cross-contamination by the following:

(1) Separating raw animal foods during storage, preparation, holding, and display from:

- (A) raw ready-to-eat food, including other raw animal food, such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food, such as vegetables; and
- (B) cooked ready-to-eat food.

(2) Except when combined as ingredients, separating types of raw animal foods from each other, such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

- (A) using separate equipment for each type, or arranging each type of food in equipment so that cross-contamination of one (1) type with another is prevented; and
- (B) preparing each type of food at different times or in separate areas.

(3) Cleaning equipment and utensils as specified under section 296(a) of this rule and sanitizing as specified under section 303 of this rule.

(4) Cleaning hermetically sealed containers of food of visible soil before opening.

(5) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened.

(6) Storing damaged, spoiled, or recalled food being held in the retail food establishment as specified under section 202 of this rule.

(7) Separating fruits and vegetables, before they are washed, as specified under section 175 of this rule from ready-to-eat food.

(b) Subsection (a)(4) does not apply to the following:

- (1) Whole, uncut raw fruits and vegetables and nuts in the shell that require peeling or hulling before consumption.
- (2) Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks.
- (3) Whole, uncut, processed meats, such as country hams and smoked or cured sausages, that are placed on clean, sanitized racks.
- (4) Food being cooled as specified under section 190(b)(2) of this rule.
- (5) Shellstock.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-173*)

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410 IAC 7-24-174 Food storage containers; identified with common name of food

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 174. (a) Working containers holding food or food ingredients that are removed from their original packages for use in the retail food establishment, such as:

- (1) cooking oils;
- (2) flour;
- (3) herbs;
- (4) potato flakes;
- (5) salt;
- (6) spices; and
- (7) sugar;

shall be identified with the common name of the food, except that containers holding food that can be readily and unmistakably recognized, such as dry pasta, need not be identified.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-174*)

410 IAC 7-24-175 Washing fruits and vegetables

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 175. (a) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form, except:

- (1) as specified in subsection (b); and
- (2) that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.

(b) Fruits and vegetables may be washed by using chemicals as specified under section 444 of this rule.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-175*)

410 IAC 7-24-176 Storage or display of food in contact with water or ice

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 176. (a) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(b) Except as specified in subsections (c) and (d), unpackaged food may not be stored in direct contact with

undrained ice.

(c) Whole, raw fruits or vegetables; cut, raw vegetables, such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

(d) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

(e) For purposes of this section, a violation of subsections (a) through (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-176*)

410 IAC 7-24-177 Food storage

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 177. (a) Except as specified in subsections (b) and (c), food shall be protected from contamination by storing the food as follows:

- (1) In a clean, dry location.
- (2) Where it is not exposed to splash, dust, or other contamination.
- (3) At least six (6) inches above the floor.
- (4) In a manner to prevent overcrowding.
- (5) In packages, covered containers, or wrappings.

(b) Food in packages and working containers may be stored less than six (6) inches above the floor on case lot handling equipment.

(c) Pressurized beverage containers, cased food in waterproof containers, such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(d) For purposes of this section, a violation of subsection (a)(1), (a)(2), (a)(3), (a)(4), (b), or (c) is a noncritical item.

(e) For purposes of this section, a violation of subsection (a)(5) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or an environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-177*)

410 IAC 7-24-178 Food storage; prohibited areas

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 178. (a) Food may not be stored as follows:

- (1) In the following:
 - (A) Locker rooms.
 - (B) Toilet rooms.
 - (C) Dressing rooms.

- (D) Garbage rooms.
- (E) Mechanical rooms, when contamination is likely to occur.
- (2) Under the following:
 - (A) Sewer lines that are not shielded to intercept potential drips.
 - (B) Leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed.
 - (C) Open stairwells.
 - (D) Other sources of contamination.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-178*)

410 IAC 7-24-179 Food display

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 179. (a) Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of:

- (1) packaging;
- (2) counter, service line, or salad bar food guards;
- (3) display cases; or
- (4) other effective means.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-179*)

410 IAC 7-24-180 Condiments; protection

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 180. (a) Condiments shall be protected from contamination by being kept in:

- (1) dispensers that are designed to provide protection;
- (2) protected food displays provided with the proper utensils;
- (3) original containers designed for dispensing; or
- (4) individual packages or portions.

(b) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the following:

- (1) The retail food establishment that provides food to the vending machine location.
- (2) A food processing plant that is regulated by the agency that has jurisdiction over the operation.
- (3) A properly equipped facility that is located on the site of the vending machine location.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of*

Health; 410 IAC 7-24-180)

410 IAC 7-24-181 Consumer self-service operations

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 181. (a) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish, may not be offered for consumer self-service. This section does not apply to:

- (1) consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods, such as sushi or raw shellfish; or
- (2) ready-to-cook individual portions for immediate cooking and consumption on the premises, such as:
 - (A) consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or
 - (B) raw, frozen, shell-on shrimp or lobster.

(b) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

(c) Consumer self-service operations, such as buffets and salad bars, shall be monitored by food employees trained in safe operating procedures.

(d) For purposes of this section, a violation of subsection (a) is a critical item.

(e) For purposes of this section, a violation of subsection (b) or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-181*)

410 IAC 7-24-182 Cooking of raw animal foods

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 182. (a) Except as specified under subsections (b) through (d), raw animal foods, such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one (1) of the following methods based on the food that is being cooked:

(1) One hundred forty-five (145) degrees Fahrenheit or above for fifteen (15) seconds for the following:

(A) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service.

(B) Except as specified under subdivisions (2) and (3) and subsection (b), fish, meat, and game animal.

(2) One hundred fifty-five (155) degrees Fahrenheit for fifteen (15) seconds or the temperature specified in the chart in subsection (b) that corresponds to the holding time for the following:

(A) Injected meats.

(B) Raw eggs, such as eggs that are pooled, that are not prepared as specified under subdivision (1).

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- (C) Comminuted meat, fish, or game animal.
 (3) One hundred sixty-five (165) degrees Fahrenheit or above for fifteen (15) seconds for the following:
 (A) Poultry.
 (B) Game animals.
 (C) Stuffed:
 (i) fish;
 (ii) meat;
 (iii) pasta; or
 (iv) poultry.
 (D) Stuffing containing fish, meat, or poultry.

- (b) Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts, such as ham, shall be cooked as follows:
 (1) In an oven that is preheated to the temperature specified for the roast's weight in the chart in subdivision (3) and that is held at that temperature.
 (2) As specified in the chart in subdivision (3), to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature.
 (3) The minimum cooking temperatures and holding times at a specified temperature are as follows:

MINIMUM COOKING TEMPERATURES AND HOLDING TIMES AT SPECIFIED TEMPERATURE			
165°F for 15 seconds	Poultry and foods containing poultry; stuffed meat, fish, or pasta; and stuffing containing fish or meat; foods containing game animals.		
165°F for 2 minutes	Microwave cooking for raw animal foods: covered, rotated, or stirred throughout or midway through the cooking process and held for 2 minutes covered.		
158°F for 1 second 155°F for 15 seconds 150°F for 1 minute or 145°F for 3 minutes	Injected meats; comminuted raw meat, fish, or game animal; and raw shell eggs that are not prepared for immediate service (pooled or hot held).		
145°F for 15 seconds	Raw shell eggs prepared for immediate service; meat, fish, and game animal not otherwise specified in this chart.		
158°F for 0 seconds 157°F for 14 seconds 155°F for 22 seconds 153°F for 34 seconds 151°F for 54 seconds 149°F for 85 seconds 147°F for 134 seconds 145°F for 4 minutes 144°F for 5 minutes	Roasts of beef, corned beef, pork, and cured pork: Note – holding time may include post-cooking heat rise.		
	Oven Type	Roast Weight Less than 10 lbs.	Roast Weight More than 10 lbs.
142°F for 8 minutes 140°F for 12 minutes 138°F for 18 minutes 136°F for 28 minutes 135°F for 36 minutes 133°F for 56 minutes 131°F for 89 minutes or 130°F for 112 minutes	Still Dry	Oven temperature ≥ 350°F	Oven temperature ≥ 250°F
	Convection	Oven temperature ≥ 325°F	Oven temperature ≥ 250°F
	High Humidity ⁽¹⁾	Oven temperature ≤ 250°F	Oven temperature ≤ 250°F
135°F	Potentially hazardous food cooked for hot holding: fruits, vegetables, and potentially hazardous foods not otherwise listed that will be hot held.		

⁽¹⁾ Relative humidity greater than ninety (90) percent for at least 1 hour as measured in the cooking chamber or exit of the oven or in a moisture-impermeable bag that provides one hundred (100) percent humidity.

- (c) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if the:
 (1) food establishment serves a population that is not a highly susceptible population;
 (2) steak is labeled to indicate that it meets the definition of whole-muscle, intact beef as specified under section

- 142(e) of this rule; and
 (3) steak is cooked on both the top and bottom to a surface temperature of one hundred forty-five (145) degrees Fahrenheit or above and a cooked color change is achieved on all external surfaces.
 (d) A raw animal food, such as:

- (1) raw egg;
- (2) raw fish;
- (3) raw-marinated fish;
- (4) raw molluscan shellfish; or
- (5) steak tartare;

or a partially cooked food, such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subsection (c), may be served or offered for sale in a ready-to-eat form if the retail food establishment serves a population that is not a highly susceptible population and the consumer is informed as specified under section 196 of this rule that to ensure its safety, the food should be cooked as specified under subsection (a) or (b).

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-182*)

410 IAC 7-24-183 Microwave cooking

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 183. (a) Raw animal foods cooked in a microwave oven shall be:

- (1) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- (2) covered to retain surface moisture;
- (3) heated to a temperature of at least one hundred sixty-five (165) degrees Fahrenheit in all parts of the food; and
- (4) allowed to stand covered for two (2) minutes after cooking to obtain temperature equilibrium.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-183*)

410 IAC 7-24-184 Microwave ovens

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 184. (a) Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-184*)

410 IAC 7-24-185 Preparation for immediate service

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 185. (a) Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-185*)

410 IAC 7-24-186 Cooking for hot holding

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 186. (a) Fruits, vegetables, and any potentially hazardous foods not covered under sections 182 and 183 of this rule that are cooked for hot holding shall be cooked to an internal temperature of one hundred thirty-five (135) degrees Fahrenheit.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-186*)

410 IAC 7-24-187 Potentially hazardous food; hot and cold holding

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 187. (a) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under section 193 of this rule, potentially hazardous food shall be maintained as follows:

- (1) At one hundred thirty-five (135) degrees Fahrenheit or above, except that roasts cooked to a temperature and for a time specified under section 182(b) of this rule or reheated as specified in section 188(e) of this rule may be held at a temperature of one hundred thirty (130) degrees Fahrenheit.

(2) At a temperature specified in the following:

- (A) At forty-one (41) degrees Fahrenheit or less.
- (B) At forty-five (45) degrees Fahrenheit or between forty-five (45) degrees Fahrenheit and forty-one (41) degrees Fahrenheit in existing refrigeration equipment that is not capable of maintaining the food at forty-one (41) degrees Fahrenheit or less if:
 - (i) the equipment is in place and in use in the retail food establishment; and
 - (ii) by April 29, 2010, the equipment is upgraded or replaced to maintain food at a temperature of forty-one (41) degrees Fahrenheit or less.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-187*)

410 IAC 7-24-188 Reheating for hot holding

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 188. (a) Except as specified under subsections (b), (c), and (e), potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all

parts of the food reach a temperature of at least one hundred sixty-five (165) degrees Fahrenheit for fifteen (15) seconds.

(b) Except as specified under subsection (c), potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five (165) degrees Fahrenheit and the food is rotated or stirred, covered, and allowed to stand covered for two (2) minutes after reheating.

(c) Ready-to-eat food taken from:

- (1) a commercially processed, hermetically sealed container; or
- (2) an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant;

shall be heated to a temperature of at least one hundred thirty-five (135) degrees Fahrenheit for hot holding.

(d) Reheating for hot holding shall be done rapidly, and the time the food is between the temperature specified under section 187(a)(2) or 187(a)(3) of this rule and one hundred sixty-five (165) degrees Fahrenheit may not exceed two (2) hours.

(e) Remaining unsliced portions of roasts of beef that are cooked as specified under section 182(b) of this rule may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under section 182(b) of this rule.

(f) For purposes of this section, a violation of subsection (a), (b), (c), (d), or (e) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-188*)

410 IAC 7-24-189 Potentially hazardous food; cooling

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 189. (a) Cooked potentially hazardous food shall be cooled as follows:

- (1) Within two (2) hours, from one hundred thirty-five (135) degrees Fahrenheit to seventy (70) degrees Fahrenheit.
- (2) Within four (4) hours, from seventy (70) degrees Fahrenheit to forty-one (41) degrees Fahrenheit or less, or to forty-five (45) degrees Fahrenheit as specified under section 187(a)(2) of this rule.
- (3) The entire cooling process must be completed within six (6) continuous hours.

(b) Potentially hazardous food shall be cooled within four (4) hours to forty-one (41) degrees Fahrenheit or less, or to forty-five (45) degrees Fahrenheit as specified under section

187(a)(2) of this rule if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(c) Except as specified in subsection (d), a potentially hazardous food received in compliance with laws allowing a temperature above forty-one (41) degrees Fahrenheit during shipment from the supplier as specified in section 166(b) of this rule, shall be cooled within four (4) hours to forty-one (41) degrees Fahrenheit or less, or forty-five (45) degrees Fahrenheit or less as specified under section 187(a)(3) of this rule.

(d) Shell eggs need not comply with subsection (c) if the eggs are placed immediately upon their receipt in refrigerated equipment that is capable of maintaining food at forty-one (41) degrees Fahrenheit or less, or forty-five (45) degrees Fahrenheit or less as specified under section 187(a)(3) of this rule.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-189*)

410 IAC 7-24-190 Cooling methods

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 190. (a) Cooling shall be accomplished in accordance with the time and temperature criteria specified under section 189 of this rule by using one (1) or more of the following methods based on the type of food being cooled:

- (1) Placing the food in shallow pans.
- (2) Separating the food into smaller or thinner portions.
- (3) Using rapid cooling equipment.
- (4) Stirring the food in a container placed in an ice water bath.
- (5) Using containers that facilitate heat transfer.
- (6) Adding ice as an ingredient.
- (7) Other effective methods.

(b) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

- (1) arranged in the equipment to provide maximum heat transfer through the container walls; and
- (2) loosely covered, or uncovered if protected from overhead contamination as specified under section 177(a)(2) of this rule, during the cooling period to facilitate heat transfer from the surface of the food.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-190*)

410 IAC 7-24-191 Ready-to-eat, potentially hazardous food; date marking

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 191. (a) Except as specified in subsection (d), refrigerated, ready-to-eat, potentially hazardous food prepared and held in a food establishment for more than twenty-four (24) hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in section 187(a)(2)(B) of this rule, the day of preparation shall be counted as day one (1).

(b) Except as specified in subsections (d) and (e), refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is to be held for more than twenty-four (24) hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in section 187(a)(2)(B) of this rule and as follows:

- (1) The day the original container is opened in the food establishment shall be counted as day one (1).
- (2) The day or date marked by the food establishment may not exceed a manufacturer's "use by" date if the manufacturer determined the "use by" date based on food safety.

(c) A refrigerated, ready-to-eat potentially hazardous food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine, may be marked as specified in subsection (a) or (b), or by an alternative method acceptable to the regulatory authority.

(d) Subsection (a) or (b) do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(e) Subsection (b) does not apply to the following when the face has been cut, but the remaining portion is whole and intact:

- (1) Fermented sausages produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" and that retain the original casing on the product.
- (2) Shelf stable, dry, fermented sausages.
- (3) Shelf stable salt-cured products, such as prosciutto and Parma (ham), produced in a federally inspected food processing plant that are not labeled "keep refrigerated".

(f) A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(g) For purposes of this section, a violation of subsection (a), (b), (c), (d), (e), or (f) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-191*)

410 IAC 7-24-192 Disposition of ready-to-eat potentially hazardous food; date marking

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 192. (a) A food specified in section 191(a) or 191(b) of this rule shall be discarded if it:

- (1) exceeds either of the temperature and time combinations specified in section 187(a)(2)(B) of this rule, except time that the product is frozen;
- (2) is in a container or package that does not bear a date or day; or
- (3) is appropriately marked with a date or day that exceeds a temperature and time combination as specified in section 187(a)(2)(B) of this rule.

(b) Refrigerated, ready-to-eat, potentially hazardous food prepared in a retail food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in section 187(a)(2)(B) of this rule.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-192*)

410 IAC 7-24-193 Time as a public health control

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 193. (a) Except as specified under subsection (b), if time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

- (1) the food shall be:
 - (A) clearly marked or otherwise identified to indicate the time that is four (4) hours past the point in time; and
 - (B) cooked and served, served if ready-to-eat, or discarded, within four (4) hours from the point in time; when the food is removed from temperature control;
- (2) the food in unmarked containers or packages or marked to exceed a four (4) hour limit shall be discarded; and
- (3) written procedures shall be:
 - (A) approved by the regulatory authority prior to use; and
 - (B) maintained in the retail food establishment and made available to the regulatory authority, upon

request, that ensure compliance with:

- (i) this section; and
- (ii) section 189 of this rule for food that is prepared, cooked, and refrigerated before time is used as a public health control.

(b) In a retail food establishment that serves a highly susceptible population, time alone shall not be used as the public health control for raw eggs.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-193*)

410 IAC 7-24-194 Confidentiality of trade secrets

Authority: IC 16-42-5-5

Affected: IC 5-14-3; IC 16-42-5; IC 24-2-3

Sec. 194. (a) The regulatory authority shall treat as confidential in accordance with IC 24-2-3 and IC 5-14-3:

- (1) the information contained in plans and specifications listed in section 111 of this rule;
- (2) a HACCP plan; or
- (3) inspection report forms that meet the criteria of a trade secret.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-194*)

410 IAC 7-24-195 Reduced oxygen packaging; criteria

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 195. (a) Except for a food establishment that obtains a variance as specified under section 114 of this rule, a retail food establishment that packages food using a reduced oxygen packaging method and clostridium botulinum is identified as a microbiological hazard in the final packaged form shall ensure that there are at least two (2) barriers in place to control the growth and toxin formation of clostridium botulinum.

(b) A food establishment that packages food using a reduced oxygen packaging method and clostridium botulinum is identified as a microbiological hazard in the final packaged form shall have a HACCP plan that contains the information specified under section 115(a)(4) of this rule and that does the following:

- (1) Identifies the food to be packaged.
- (2) Limits the food packaged to a food that does not support the growth of clostridium botulinum because it complies with one (1) or more of the following:
 - (A) Has an a_w of 0.91 or less.
 - (B) Has a pH of 4.6 or less.
 - (C) Is a meat or poultry product cured at a food processing plant regulated by the United States Depart-

ment of Agriculture using substances specified in 9 CFR 424.21 and is received in an intact package.

(D) Is a food with a high level of competing organisms such as raw meat or raw poultry.

(3) Specifies methods for maintaining food at forty-one (41) degrees Fahrenheit or below.

(4) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background with instructions to:

(A) maintain the food at forty-one (41) degrees Fahrenheit or below; and

(B) for food held at refrigeration temperatures, discard the food if within fourteen (14) calendar days of its packaging, it is not served for on-premises consumption, consumed if served, or sold for off-premises consumption.

(5) Limits the refrigerated shelf life to not more than fourteen (14) calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(6) Includes operational procedures that:

(A) prohibit contacting food with bare hands;

(B) identify a designated area and the method by which:

(i) physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination; and

(ii) access to the processing equipment is limited to responsible, trained personnel familiar with the potential hazards of the operation; and

(C) delineate cleaning and sanitization procedures for food-contact surfaces.

(7) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the following:

(A) Concepts required for a safe operation.

(B) Equipment and facilities.

(C) Procedures specified under subdivision (6) and section 115(a)(4) of this rule.

(c) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-195*)

410 IAC 7-24-196 Consumption of raw or undercooked foods of animal origin

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 196. (a) Except as specified in sections 182(c),

182(d)(3), and 153 of this rule, if an animal food such as:

- (1) beef;
- (2) eggs;
- (3) fish;
- (4) lamb;
- (5) milk;
- (6) pork;
- (7) poultry; or
- (8) shellfish;

is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the owner or operator of the retail food establishment shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in subsections (b) and (c) using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written or visual means.

(b) A disclosure shall include:

- (1) a description of the animal-derived foods, such as:
 - (A) oysters on the half shell (raw oysters);
 - (B) raw-egg caesar salad; and
 - (C) hamburgers (can be cooked to order); or
- (2) identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked or contain (or may contain) raw or undercooked ingredients.

(c) A reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states one (1) of the following:

- (1) Regarding the safety of these items, written information is available upon request.
- (2) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness.
- (3) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

(d) Long term care health facilities and other institutional facilities, which provide meals to residents who are at least sixty-five (65) years of age, shall provide written information to resident consumers informing them of the risks associated with consuming food described in subsection (a). The facility shall have a record of the notice on file as long as residency is maintained at the facility by the consumer.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-196*)

410 IAC 7-24-197 Time and temperature control of frozen food

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 197. (a) Stored frozen foods shall be maintained frozen and should be stored at zero (0) degrees Fahrenheit.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-197*)

410 IAC 7-24-198 Potentially hazardous food; slacking

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 198. (a) Frozen potentially hazardous food that is slacked to moderate the temperature shall be held:

- (1) under refrigeration that maintains the food temperature at forty-one (41) degrees Fahrenheit or less or at forty-five (45) degrees Fahrenheit or less as specified under section 187(a)(2)(B) of this rule; or
- (2) at any temperature if the food remains frozen.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-198*)

410 IAC 7-24-199 Thawing of food

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 199. (a) Except as specified in subdivision (4), potentially hazardous food shall be thawed:

- (1) under refrigeration that maintains the food temperature at forty-one (41) degrees Fahrenheit or less or at forty-five (45) degrees Fahrenheit or less as specified under section 187(a)(2)(B) of this rule;
- (2) completely submerged under running water:
 - (A) at a water temperature of seventy (70) degrees Fahrenheit or below;
 - (B) with sufficient water velocity to agitate and float off loose particles in an overflow;
 - (C) for a period of time that does not allow thawed portions of ready-to-eat food to rise above forty-one (41) degrees Fahrenheit or forty-five (45) degrees Fahrenheit as specified under section 187(a)(2)(B) of this rule; or
 - (D) for a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under section 182(a) or 182(b) of this rule to be above forty-one (41) degrees Fahrenheit or forty-five (45) degrees Fahrenheit as specified under section 187(a)(3) of this rule, for more than four (4) hours including the time:

- (i) the food is exposed to the running water and the time needed for preparation for cooking; or
- (ii) it takes under refrigeration to lower the food temperature to forty-one (41) degrees Fahrenheit or

forty-five (45) degrees Fahrenheit as specified under section 187(a)(2)(B) of this rule;

- (3) as part of a cooking process if the food that is frozen is:
- (A) cooked as specified under section 182(a), 182(b), or 183 of this rule; or
 - (B) thawed in a microwave oven and immediately transferred to conventional cooking equipment with no interruption in the process; or
- (4) using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-199*)

410 IAC 7-24-200 Food contact with equipment and utensils
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 200. (a) Food shall only contact surfaces of equipment and utensils that are cleaned as specified under sections 248, 276, 287, and 295 through 302 of this rule and sanitized as specified under section 303 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-200*)

410 IAC 7-24-201 Returned food; reservice or sale
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 201. (a) Except as specified in subsection (b), after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

(b) Except as specified under section 153(a)(3) of this rule, a container of food that is not potentially hazardous may be transferred from one (1) consumer to another if:

- (1) the food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or
- (2) the food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-201*)

410 IAC 7-24-202 Segregation of distressed merchandise
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 202. (a) Products that are held by the owner or operator in a retail food establishment for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from:

- (1) food;
- (2) equipment;
- (3) utensils;
- (4) linens; and
- (5) single-service and single-use articles.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-202*)

410 IAC 7-24-203 Food preparation
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 203. (a) During preparation, unpackaged food shall be protected from environmental sources of contamination.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-203*)

410 IAC 7-24-204 Miscellaneous sources of contamination
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 204. (a) Food shall be protected from contamination that may result from a factor or source not specified under section 151, 168, 170 through 181, 200, 201, 203, 234, 236, 245 through 247, 249, or 260 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or an environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-204*)

410 IAC 7-24-205 Characteristics of materials for utensils and food-contact surfaces
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 205. (a) Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be as follows:

- (1) Safe.
- (2) Durable, corrosion-resistant, and nonabsorbent.
- (3) Sufficient in weight and thickness to withstand repeated warewashing.
- (4) Finished to have a smooth, easily cleanable surface.

(5) Resistant to the following:

- (A) Pitting.
- (B) Chipping.
- (C) Crazeing.
- (D) Scratching.
- (E) Scoring.
- (F) Distortion.
- (G) Decomposition.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-205*)

410 IAC 7-24-206 Cast iron; use limitation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 206. (a) Except as specified in this section, cast iron may not be used for utensils or food-contact surfaces of equipment.

(b) Cast iron may be used as a surface for cooking.

(c) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-206*)

410 IAC 7-24-207 Lead in ceramic, china, and crystal utensils; use limitation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 207. (a) Ceramic, china, crystal utensils, and decorative utensils, such as hand-painted ceramic or china, that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

Utensil Category	Description	Maximum Lead ppm
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls ≥ 1.16 Quart	1
Small Hollowware	Bowls < 1.16 Quart	2.0
Flat Utensils	Plates, Saucers	3.0

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-207*)

410 IAC 7-24-208 Copper; use limitation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 208. (a) Except as specified in subsection (b), copper and copper alloys, such as brass, may not be used in contact with:

- (1) a food that has a pH below 6, such as vinegar, fruit juice, or wine; or
- (2) for a fitting or tubing installed between a backflow prevention device and a carbonator.

(b) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation, such as a brew pub or microbrewery.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-208*)

410 IAC 7-24-209 Galvanized metal; use limitation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 209. (a) Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-209*)

410 IAC 7-24-210 Sponges; use limitation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 210. (a) Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-210*)

410 IAC 7-24-211 Lead in pewter alloys; use limitation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 211. (a) Pewter alloys containing lead in excess of five-hundredths percent (0.05%) may not be used as a food-contact surface.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-211*)

410 IAC 7-24-212 Lead in solder and flux; use limitation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 212. (a) Solder and flux containing lead in excess of two-tenths percent (0.2%) may not be used as a food-

contact surface.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-212*)

410 IAC 7-24-213 Wood; use limitation

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 213. (a) Except as specified in this section, wood and wood wicker may not be used as a food-contact surface.

(b) Hard maple or an equivalently hard, close-grained wood may be used for the following:

(1) Cutting boards, cutting blocks, bakers' tables, and utensils, such as the following:

(A) Rolling pins.

(B) Doughnut dowels.

(C) Salad bowls.

(D) Chopsticks.

(2) Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of two hundred thirty (230) degrees Fahrenheit or above.

(c) Whole, uncut raw fruits and vegetables and nuts in the shell may be kept in the wood shipping containers in which they were received until the fruits, vegetables, or nuts are used.

(d) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(1) untreated wood containers; or

(2) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-213*)

410 IAC 7-24-214 Food equipment; cutting surfaces

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 214. (a) Surfaces, such as cutting blocks and boards, that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized or discarded if they are not capable of being resurfaced.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-214*)

410 IAC 7-24-215 Nonstick coatings; use limitation

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 215. (a) Multiuse kitchenware, such as:

(1) frying pans;

(2) griddles;

(3) sauce pans;

(4) cookie sheets; and

(5) waffle bakers;

that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-215*)

410 IAC 7-24-216 Nonfood-contact surfaces

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 216. (a) Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-216*)

410 IAC 7-24-217 Durability and strength of equipment and utensils

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 217. (a) Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-217*)

410 IAC 7-24-218 Repair and proper adjustment of equipment

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 218. (a) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under section 112, 161, 205 through 217, 219 through 226, 229 through 232, 240, 253 through 256, 261 through 266, 271, 277 through 279, 280 through 282, 288, 305, 306, or 333 of this rule.

(b) Equipment components, such as:

(1) doors;

(2) seals;

(3) hinges;
 (4) fasteners; and
 (5) kick plates;
 shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(c) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-218*)

410 IAC 7-24-219 "V" threads; use limitation

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 219. (a) "V" type threads may not be used on food-contact surfaces. This section does not apply to hot oil cooking or filtering equipment.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-219*)

410 IAC 7-24-220 Hot oil filtering equipment

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 220. (a) Hot oil filtering equipment shall meet the characteristics specified under section 229 or 230 of this rule and shall be readily accessible for filter replacement and cleaning of the filter.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-220*)

410 IAC 7-24-221 Kick plates; removable

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 221. (a) Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

- (1) removable by one (1) of the methods specified under section 229 of this rule or capable of being rotated open; and
- (2) removable or capable of being rotated open without unlocking equipment doors.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-221*)

410 IAC 7-24-222 Equipment openings, closures, and deflectors

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 222. (a) A cover or lid for equipment shall overlap the opening and be sloped to drain.

(b) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least two-tenths (.2) of an inch.

(c) Except as specified under subsection (d):

- (1) fixed piping;
 - (2) temperature measuring devices;
 - (3) rotary shafts; and
 - (4) other parts extending into equipment;
- shall be provided with a watertight joint at the point where the item enters the equipment.

(d) If a watertight joint is not provided:

- (1) the piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and
- (2) the opening shall be flanged as specified in subsection (b).

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-222*)

410 IAC 7-24-223 Bearings and gearboxes; leakproof

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 223. (a) Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-223*)

410 IAC 7-24-224 Beverage tubing; separation

Authority: IC 16-42-5-5
 Affected: IC 16-42-5

Sec. 224. (a) Beverage tubing and cold-plate beverage cooling devices may not be installed in contact with ice stored for human consumption. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-224*)

410 IAC 7-24-225 Condenser unit; separation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 225. (a) If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-225*)

410 IAC 7-24-226 Equipment compartments; drainage

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 226. (a) Equipment compartments that are subject to accumulation of moisture due to conditions, such as:

- (1) condensation;
- (2) food or beverage drip; or
- (3) water from melting ice;

shall be sloped to an outlet that allows complete draining.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-226*)

410 IAC 7-24-227 Fixed equipment; spacing or sealing

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 227. (a) Equipment that is fixed because it is not easily movable shall be installed so that it is:

- (1) spaced to allow access for cleaning along the sides, behind, and above the equipment;
- (2) spaced from adjoining equipment, walls, and ceilings a distance of not more than one thirty-second ($1/32$) inch; or
- (3) sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(b) Table-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

- (1) sealed to the table; or
- (2) elevated on legs as specified under section 228(d) of this rule.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-227*)

410 IAC 7-24-228 Fixed equipment; elevation or sealing

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 228. (a) Except as specified in subsections (b) and (c), floor-mounted equipment that is not easily movable shall be

sealed to the floor or elevated on legs that provide at least a six (6) inch clearance between the floor and the equipment.

(b) If no part of the floor under the floor-mounted equipment is more than six (6) inches from the point of cleaning access, the clearance space may be only four (4) inches.

(c) This section does not apply to display:

- (1) shelving units;
- (2) refrigeration units; and
- (3) freezer units;

located in consumer shopping areas, such as in a grocery store, if the floor under the units is maintained clean.

(d) Except as specified in subsection (e), table-mounted equipment that is not easily movable shall be elevated on legs that provide at least a four (4) inch clearance between the table and the equipment.

(e) The clearance space between the table and table-mounted equipment may be:

- (1) three (3) inches if the horizontal distance of the table top under the equipment is no more than twenty (20) inches from the point of access for cleaning; or
- (2) two (2) inches if the horizontal distance of the table top under the equipment is no more than three (3) inches from the point of access for cleaning.

(f) For purposes of this section, a violation of subsection (a), (b), (c), (d), or (e) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-228*)

410 IAC 7-24-229 Cleanability of food-contact surfaces

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 229. (a) Multiuse food-contact surfaces shall be as follows:

- (1) Smooth.
- (2) Free of the following:
 - (A) Breaks.
 - (B) Open seams.
 - (C) Cracks.
 - (D) Chips.
 - (E) Inclusions.
 - (F) Pits.
 - (G) Similar imperfections.
- (3) Free of sharp internal angles, corners, and crevices.
- (4) Finished to have smooth welds and joints.
- (5) Except as specified in subsection (b), accessible for cleaning and inspection either:
 - (A) without being disassembled;
 - (B) by disassembling without the use of tools; or
 - (C) by easily disassembling with the use of handheld

tools commonly available to maintenance and cleaning personnel, such as the following:

- (i) Screwdrivers.
- (ii) Pliers.
- (iii) Open-end wrenches.
- (iv) Allen wrenches.

(b) Subsection (a)(5) does not apply to the following:

- (1) Cooking oil storage tanks.
- (2) Distribution lines for cooking oils.
- (3) Beverage syrup lines or tubes.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-229*)

410 IAC 7-24-230 CIP equipment

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 230. (a) CIP equipment shall meet the characteristics specified under section 229 of this rule and shall be designed and constructed so that:

- (1) cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; and
- (2) the system is self-draining or capable of being completely drained of cleaning and sanitizing solutions.

(b) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-230*)

410 IAC 7-24-231 Cleanability of can openers

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 231. (a) Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-231*)

410 IAC 7-24-232 Cleanability of nonfood-contact surfaces

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 232. (a) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices and designed and constructed to allow easy cleaning and to facilitate maintenance.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-232*)

410 IAC 7-24-233 Utensils; consumer self-service

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 233. (a) A food dispensing utensil shall be available for each container displayed at a consumer self-service unit, such as a buffet or salad bar.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-233*)

410 IAC 7-24-234 In-use utensils; between-use storage

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 234. (a) During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored in one (1) of the following ways:

- (1) Except as specified under subdivision (2), in the food with their handles above the top of the food and the container.
- (2) In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of ice, sugar, flour, or cinnamon.
- (3) On a clean portion of the food preparation table or cooking equipment if both the in-use utensil and food-contact surfaces of food preparation tables or cooking equipment are cleaned and sanitized at a frequency specified under section 296, 297, or 303 of this rule.
- (4) In running water of sufficient velocity to flush particulates to the drain if used with moist food, such as ice cream or mashed potatoes.
- (5) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous.
- (6) In water maintained clean and at a temperature of at least one hundred thirty-five (135) degrees Fahrenheit.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-234*)

410 IAC 7-24-235 Good repair and calibration

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 235. (a) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under section 112, 161, 205 through 217, 219 through 226, 229 through 232, 240, 253 through 256, 261 through 266, 271, 277 through 279, 281, 282, 288, 305, 306,

or 333 of this rule or shall be discarded.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-235*)

410 IAC 7-24-236 Linens and napkins; use limitation

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 236. (a) Linens and napkins may not be used in contact with food unless they are used temporarily to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-236*)

410 IAC 7-24-237 Clean linens

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 237. (a) Clean linens shall be free from food residues and other soiling matter.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-237*)

410 IAC 7-24-238 Storage of soiled linens

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 238. (a) Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of the following:

- (1) Food.
- (2) Clean equipment.
- (3) Clean utensils.
- (4) Single-service and single-use articles.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-238*)

410 IAC 7-24-239 Equipment, utensils, and linens

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 239. (a) Except as specified in subsection (c), cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored as follows:

- (1) In a clean, dry location.
- (2) Where they are not exposed to splash, dust, or other contamination.

- (3) At least six (6) inches above the floor.
- (4) In a manner to prevent overcrowding.

(b) Clean equipment and utensils shall be stored as follows:

- (1) As specified in subsection (a).
- (2) In a self-draining position that allows air drying.
- (3) Covered or inverted.

(c) Items that are kept in closed packages may be stored less than six (6) inches above the floor on the following:

- (1) Dollies.
- (2) Pallets.
- (3) Racks.
- (4) Skids.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-239*)

410 IAC 7-24-240 Characteristics of materials used in single-service and single-use articles

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 240. (a) Materials that are used to make single-service and single-use articles may not:

- (1) allow the migration of deleterious substances; or
- (2) impart colors, odors, or tastes to food.

(b) These materials shall be:

- (1) safe; and
- (2) clean.

(c) For purposes of this section, a violation of subsection (a)(1) or (b)(1) is a critical item.

(d) For purposes of this section, a violation of subsection (a)(2) or (b)(2) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-240*)

410 IAC 7-24-241 Single-service and single-use articles; required use

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 241. (a) An owner or operator of a retail food establishment without facilities specified under section 248, 276, 287, or 295 through 303 of this rule for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-241*)

410 IAC 7-24-242 Single-service, single-use, and shell articles; use limitation

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 242. (a) Single-service and single-use articles may not be reused.

(b) Mollusk and crustacea shells and cedar planks may not be used more than once as serving containers.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-242*)

410 IAC 7-24-243 Single-service and single-use articles

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 243. (a) Except as specified in subsection (c), single-service and single-use articles shall be stored as follows:

- (1) In a clean, dry location.
- (2) Where they are not exposed to splash, dust, or other contamination.
- (3) At least six (6) inches above the floor.
- (4) In a manner to prevent overcrowding.

(b) Single-service and single-use articles shall be stored as specified under subsection (a) and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(c) Items that are kept in closed packages may be stored less than six (6) inches above the floor on the following:

- (1) Dollies.
- (2) Pallets.
- (3) Racks.
- (4) Skids.

(d) For purposes of this section, a violation of subsections (a) through (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-243*)

410 IAC 7-24-244 Storage prohibitions

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 244. (a) Except as specified in subsection (b), cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored as follows:

- (1) In the following:
 - (A) Locker rooms.
 - (B) Toilet rooms.
 - (C) Garbage rooms.
 - (D) Mechanical rooms, when contamination is likely to occur.

(2) Under the following:

- (A) Sewer lines that are not shielded to intercept potential drips.
- (B) Leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed.
- (C) Open stairwells.
- (D) Other sources of contamination.

(b) Laundered linens and single-service and single-use articles that are packaged or in a facility, such as a cabinet, may be stored in a locker room.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-244*)

410 IAC 7-24-245 Wiping cloths; used for one purpose

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 245. (a) Cloths that are in use for wiping food spills shall be used for no other purpose.

(b) Cloths used for wiping food spills shall be:

- (1) dry and used for wiping food spills from tableware and carry-out containers; or
- (2) wet and cleaned as specified under section 312(d) of this rule, stored in a chemical sanitizer as specified under section 294 of this rule, and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.

(c) Wet or dry cloths that are used with raw animal foods shall be kept separate from cloths used for other purposes, and wet cloths used with raw animal foods shall be kept in a separate sanitizing solution.

(d) Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of food debris and visible soil.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-245*)

410 IAC 7-24-246 Gloves; use limitation

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 246. (a) If used, single-use gloves shall be:

- (1) used for only one (1) task, such as working with ready-to-eat food or with raw animal food;
- (2) used for no other purpose; and
- (3) discarded when:
 - (A) damaged or soiled; or
 - (B) interruptions occur in the operation.

(b) Except as specified in subsection (c), slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under section 182, 183, or 186 of this rule, such as frozen food or a primal cut of meat.

(c) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves:

- (1) have a smooth, durable, and nonabsorbent outer surface; or
- (2) are covered with a smooth, durable, nonabsorbent glove or a single-use glove.

(d) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under section 182, 183, or 186 of this rule, such as frozen food or a primal cut of meat.

(e) For purposes of this section, a violation of subsection (a), (b), (c)(2), or (d) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or an environmental health hazard.

(f) For purposes of this section, a violation of subsection (e) is a critical item.

(g) For purposes of this section, a violation of subsection (c)(1) or (f) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-246*)

410 IAC 7-24-247 Refilling returnables

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 247. (a) A take-home food container returned to a retail food establishment may not be refilled at a retail food establishment with a potentially hazardous food.

(b) Except as specified in subsection (c), a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified under section 248 of this rule.

(c) Personal take-out beverage containers, such as:

- (1) thermally insulated bottles;
- (2) nonspill coffee cups; and
- (3) promotional beverage glasses;

may be refilled by employees or the consumer if refilling is a contamination-free process as specified under section 261(a)(1), 261(a)(2), and 261(a)(4) of this rule.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department*

of Health; 410 IAC 7-24-247)

410 IAC 7-24-248 Returnables; cleaning for refilling

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 248. (a) Except as specified in this section, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.

(b) Food containers for beverages may be refilled at a retail food establishment if:

- (1) only a beverage that is not a potentially hazardous food is used as specified under section 247(a) of this rule;
- (2) the design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow for effective cleaning;
- (3) the consumer-owned container returned to the retail food establishment for refilling is refilled for sale or service only to the same consumer; and
- (4) the container is refilled by:
 - (A) an employee of the retail food establishment; or
 - (B) the owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.

(c) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-248*)

410 IAC 7-24-249 Using clean tableware for second portions and refills

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 249. (a) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer to provide second portions or refills.

(b) Except as specified in subsection (c), self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment and shall be informed by the use of a placard, sign, or menu.

(c) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under section 261(a)(1), 261(a)(2), and 261(a)(4) of this rule.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-249*)

410 IAC 7-24-250 Handling of kitchenware and tableware

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 250. (a) Single-service articles, single-use articles, and utensils that have been sanitized shall be handled, displayed, and dispensed so that contamination of food-contact and lip-contact surfaces is prevented.

(b) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(c) Except as specified under subsection (b), single-service articles that are intended for food-contact or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-250*)

410 IAC 7-24-251 Handling of soiled and clean kitchenware

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 251. (a) Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-251*)

410 IAC 7-24-252 Protection of preset tableware

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 252. (a) If tableware is preset:

(1) it shall be protected from contamination by being wrapped, covered, or inverted; or

(2) exposed, unused settings shall be:

(A) removed when a consumer is seated; or

(B) cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-252*)

410 IAC 7-24-253 Durability and strength of food temperature measuring devices

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 253. (a) Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating, such as candy thermometers, may be used.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-253*)

410 IAC 7-24-254 Accuracy of temperature measuring devices

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 254. (a) Food temperature measuring devices that are scaled in Fahrenheit shall be accurate to plus or minus two (2) degrees Fahrenheit in the intended range of use.

(b) Food temperature measuring devices that are dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus one (1) degree Celsius in the intended range of use.

(c) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(d) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-254*)

410 IAC 7-24-255 Accuracy of ambient air and water temperature measuring devices

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 255. (a) Ambient air and water temperature measuring devices that are scaled in Fahrenheit shall be accurate to plus or minus three (3) degrees Fahrenheit in the intended range of use.

(b) Ambient air and water temperature measuring devices that are dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to plus or minus one and five-tenths (1.5) degrees Celsius in the intended range of use.

(c) For purposes of this section, a violation of subsection

(a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-255*)

410 IAC 7-24-256 Function of temperature measuring devices

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 256. (a) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(b) Except as specified in subsection (c), cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one (1) integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(c) Subsection (b) does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as the following:

- (1) Calrod units.
- (2) Heat lamps.
- (3) Cold plates.
- (4) Bainsmarie.
- (5) Steam tables.
- (6) Insulated food transport containers.
- (7) Salad bars.

(d) Temperature measuring devices shall be designed to be easily readable.

(e) Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than two (2) degrees Fahrenheit in the intended range of use.

(f) For purposes of this section, a violation of subsection (a), (b), (c), (d), or (e) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-256*)

410 IAC 7-24-257 Food temperature measuring devices

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 257. (a) Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under section 139 through 160, 162 through 167, 169 through 183, 185 through 191, 193 through 200, 203, 234,

236, 245 through 247, or 249 of this rule.

(b) A temperature measuring device with a suitable small diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods, such as meat patties and fish filets.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-257*)

410 IAC 7-24-258 Temperature measuring devices; manual warewashing

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 258. (a) In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

(b) In a warewashing machine, an auxiliary temperature measuring device shall be provided and readily accessible for frequently measuring the internal washing and sanitizing temperatures.

(c) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-258*)

410 IAC 7-24-259 Cooling, heating, and holding capacities

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 259. (a) Equipment for cooling and heating food and holding cold and hot food shall be sufficient in number and capacity to provide food temperatures as specified under section 139 through 160, 162 through 167, 169 through 183, 185 through 191, 193 through 200, 203, 234, 236, 245 through 247, or 249 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-259*)

410 IAC 7-24-260 Vended potentially hazardous food; original container

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 260. (a) Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the retail food establishment or food processing plant at which it was prepared.

(b) For purposes of this section, a violation of subsection

(a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-260*)

410 IAC 7-24-261 Dispensing equipment; protection of equipment and food

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 261. (a) In equipment that dispenses or vends liquid food or ice in unpackaged form, the following applies:

(1) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food.

(2) The delivery tube, chute, and orifice shall be protected from manual contact, such as by being recessed.

(3) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(A) located in an outside area that does not otherwise afford the protection of an enclosure against the:

- (i) rain;
- (ii) windblown debris;
- (iii) insects;
- (iv) rodents; and
- (v) other contaminants;

that are present in the environment; or

(B) available for self-service during hours when it is not under the full-time supervision of a food employee.

(4) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-261*)

410 IAC 7-24-262 Vending machine; vending stage closure

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 262. (a) The dispensing compartment of a vending machine, including a machine that is designed to vend prepackaged snack food that is not potentially hazardous, such as chips, party mixes, and pretzels, shall be equipped with a self-closing door or cover if the machine is:

(1) located in an outside area that does not otherwise afford the protection of an enclosure against the:

- (A) rain;

(B) windblown debris;

(C) insects;

(D) rodents; and

(E) other contaminants;

that are present in the environment; or

(2) available for self-service during hours when it is not under the full-time supervision of a food employee.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-262*)

410 IAC 7-24-263 Can openers on vending machines

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 263. (a) Cutting or piercing parts of can openers on vending machines shall be protected from the following:

- (1) Manual contact.
- (2) Dust.
- (3) Insects.
- (4) Rodents.
- (5) Other contamination.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-263*)

410 IAC 7-24-264 Vending machines; automatic shutoff

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 264. (a) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food if:

- (1) there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under section 139 through 160, 162 through 167, 169 through 183, 185 through 191, 193 through 200, 203, 234, 236, 245 through 247, or 249 of this rule; and
- (2) a condition specified under subdivision (1) occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under section 139 through 160, 162 through 167, 169 through 183, 185 through 191, 193 through 200, 203, 234, 236, 245 through 247, or 249 of this rule.

(b) When the automatic shutoff within a machine vending potentially hazardous food is activated in a:

- (1) refrigerated vending machine, the ambient temperature may not exceed forty-one (41) degrees Fahrenheit or forty-five (45) degrees Fahrenheit as specified under section 187(a)(2)(B) of this rule for more than thirty (30) minutes; or
- (2) hot holding vending machine, the ambient temperature may not be less than one hundred thirty-five (135)

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degrees Fahrenheit for more than one hundred twenty (120) minutes;
immediately after the machine is filled, serviced, or restocked.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-264*)

410 IAC 7-24-265 Vending machines; liquid waste products

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 265. (a) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(b) Vending machines that dispense liquid food in bulk shall be as follows:

(1) Provided with an internally mounted waste receptacle for the collection of the following:

- (A) Drip.
- (B) Spillage.
- (C) Overflow.
- (D) Other internal wastes.

(2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(c) Shutoff devices, specified under subsection (b)(2), shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

(d) For purposes of this section, a violation of subsections (a) through (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-265*)

410 IAC 7-24-266 Vending machine doors and openings

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 266. (a) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than one-sixteenth ($\frac{1}{16}$) inch by any of the following:

- (1) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than one-sixteenth ($\frac{1}{16}$) inch. Screening of twelve (12) mesh to one (1) inch meets this requirement.
- (2) Being effectively gasketed.
- (3) Having interface surfaces that are at least one-half ($\frac{1}{2}$)

inch wide.

(4) Jambs or surfaces used to form an L-shaped entry path to the interface.

(b) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than one-sixteenth ($\frac{1}{16}$) inch.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-266*)

410 IAC 7-24-267 Overhead protection on outdoor food vending areas

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 267. (a) If located outdoors, a machine used to vend food shall be provided with overhead protection, except that machines vending canned beverages need not meet this requirement.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-267*)

410 IAC 7-24-268 Receptacles in vending machines

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 268. (a) A refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-268*)

410 IAC 7-24-269 Warewashing equipment requirements

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 269. (a) A retail food establishment shall be equipped with at least one (1) of the following options for purposes of washing, rinsing, and sanitizing of equipment and utensils:

- (1) Manual warewashing equipment as specified in section 270 of this rule.
- (2) A warewashing machine.

(b) The warewashing equipment or machine must be used in accordance with this rule.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-269*)

410 IAC 7-24-270 Manual warewashing; sink compartment requirements

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 270. (a) Except as specified in subsection (c), a sink with at least three (3) compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

(b) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subsection (c) shall be used.

(c) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include the following:

- (1) High-pressure detergent sprayers.
- (2) Low-pressure or line-pressure spray detergent foamers.
- (3) Other task-specific cleaning equipment.
- (4) Brushes or other implements.
- (5) Two (2) compartment sinks as specified under subsections (d) and (e).
- (6) Receptacles that substitute for the compartments of a multicompartment sink.

(d) Before a two (2) compartment sink is used:

- (1) the owner or operator of a retail food establishment shall have its use approved; and
- (2) the nature of warewashing shall be limited to batch operations for cleaning kitchenware, such as between cutting one (1) type of raw meat and another or cleanup at the end of a shift as follows:

- (A) A limited number of items shall be cleaned.
- (B) The cleaning and sanitizing solutions shall be made up immediately before use and drained immediately after use.
- (C) A detergent-sanitizer shall be used to sanitize and shall be applied as specified under section 275 of this rule or a hot water sanitization immersion step shall be used as specified under section 302(a)(3) of this rule.

(e) A two (2) compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.

(f) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-270*)

410 IAC 7-24-271 Manual warewashing equipment; heaters and baskets

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 271. (a) If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be as follows:

- (1) Designed with an integral heating device that is capable of maintaining water at a temperature not less than one hundred seventy (170) degrees Fahrenheit.
- (2) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-271*)

410 IAC 7-24-272 Warewashing equipment; clean solutions

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 272. (a) The wash, rinse, and sanitize solutions shall be maintained clean.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-272*)

410 IAC 7-24-273 Manual warewashing equipment; wash solution temperature

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 273. (a) The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than one hundred ten (110) degrees Fahrenheit or the temperature specified on the cleaning agent manufacturer's label instructions.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-273*)

410 IAC 7-24-274 Manual warewashing equipment; hot water sanitization temperatures

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 274. (a) If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at one hundred seventy (170) degrees Fahrenheit or above.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-274*)

410 IAC 7-24-275 Manual warewashing equipment; chemical sanitization using detergent-sanitizers

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 275. (a) If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-275*)

410 IAC 7-24-276 Washing; procedures for alternative manual warewashing equipment

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 276. (a) If washing in sink compartments or a warewashing machine is impractical, such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment, as specified in section 270(c) of this rule, in accordance with the following procedures:

- (1) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts.
- (2) Equipment components and utensils shall be scraped or rough cleaned to remove food particle accumulation.
- (3) Equipment and utensils shall be washed as specified under section 301(a) of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-276*)

410 IAC 7-24-277 Pressure measuring devices; warewashing machine

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 277. (a) Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of one (1) pound per square inch or smaller and shall be accurate to two (2) pounds per square inch in the fifteen (15) to twenty-five (25) pounds per square inch range.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-277*)

410 IAC 7-24-278 Warewashing machine; data plate operating specifications

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 278. (a) A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications, including the following:

- (1) Temperatures required for washing, rinsing, and sanitizing.
- (2) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse.
- (3) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-278*)

410 IAC 7-24-279 Warewashing machine; internal baffles

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 279. (a) Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross-contamination of the solutions in wash and rinse tanks.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-279*)

410 IAC 7-24-280 Warewashing machine; temperature measuring devices

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 280. (a) A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water as follows:

- (1) In each wash and rinse tank.
- (2) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-280*)

410 IAC 7-24-281 Warewashing machine; automatic dispensing of detergents and sanitizers

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 281. (a) A warewashing machine that uses a chemical for sanitization and that is installed after the effective date of this rule shall be equipped to:

- (1) automatically dispense detergents and sanitizers; and
- (2) incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm

to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-281*)

410 IAC 7-24-282 Warewashing machine; flow pressure device

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 282. (a) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device, such as a transducer, that measures and displays the water pressure in the supply line immediately before entering the warewashing machine.

(b) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a one-fourth (¼) inch iron pipe size (IPS) valve.

(c) Subsections (a) and (b) do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-282*)

410 IAC 7-24-283 Warewashing machine; manufacturer's operating instructions

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Hot Water Machine Type	Type of Temperature	Wash Temperature of Machine	Sanitization Temperature of the Machine
Stationary Rack	Single Temperature	165°F	165°F
Stationary Rack	Dual Temperature	150°F	180°F
Single Tank	Dual Temperature	160°F	180°F
Multitank	Multitemperature	150°F	180°F
Chemical Machine		120°F	Not Applicable

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-284*)

410 IAC 7-24-285 Warewashing machine; hot water sanitization temperatures

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 285. (a) Except as specified in subsection (b), in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may be not more than one hundred ninety-four (194) degrees Fahrenheit or less than:

Sec. 283. (a) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(b) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-283*)

410 IAC 7-24-284 Warewashing machine; wash solution temperature

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 284. (a) The temperature of the wash solution in spray-type warewashing machines that use hot water to sanitize may not be less than:

- (1) for a stationary rack, single temperature machine, one hundred sixty-five (165) degrees Fahrenheit;
- (2) for a stationary rack, dual temperature machine, one hundred fifty (150) degrees Fahrenheit;
- (3) for a single tank, conveyor, dual temperature machine, one hundred sixty (160) degrees Fahrenheit; or
- (4) for a multitank, conveyor, multitemperature machine, one hundred fifty (150) degrees Fahrenheit.

(b) The temperature of the wash solution in spray-type warewashing machines that use chemicals to sanitize may be not less than one hundred twenty (120) degrees Fahrenheit.

heit or less than:

- (1) for a stationary rack, single temperature machine, one hundred sixty-five (165) degrees Fahrenheit; or
- (2) for all other machines, one hundred eighty (180) degrees Fahrenheit.

(b) The maximum temperature specified under subsection (a), does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment, such as meat saws.

(c) For purposes of this section, a violation of subsection

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(a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-285*)

410 IAC 7-24-286 Warewashing machine; sanitization pressure

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 286. (a) The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than fifteen (15) pounds per square inch or more than twenty-five (25) pounds per square inch as measured in the waterline immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-286*)

410 IAC 7-24-287 Loading of soiled items; warewashing machine

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 287. (a) Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

- (1) exposes the items to the unobstructed spray from all cycles; and
- (2) allows the items to drain.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-287*)

410 IAC 7-24-288 Warewashing sinks and drainboards; self-draining

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 288. (a) Sinks and drainboards of warewashing sinks and machines shall be self-draining.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-288*)

410 IAC 7-24-289 Drainboards

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 289. (a) Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

(b) For purposes of this section, a violation of subsection

(a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-289*)

410 IAC 7-24-290 Warewashing machine; cleaning frequency

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 290. (a) A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under section 289 of this rule shall be cleaned as follows:

- (1) Before use.
- (2) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function.
- (3) If used, at least every twenty-four (24) hours.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-290*)

410 IAC 7-24-291 Sanitizing solutions; testing devices

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 291. (a) A test kit or other device that accurately measures the concentration in ppm of sanitizing solutions shall be provided and used.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-291*)

410 IAC 7-24-292 Warewashing machine; cleaning agents

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 292. (a) When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in section 270(c) of this rule shall contain a wash solution of:

- (1) soap;
- (2) detergent;
- (3) acid cleaner;
- (4) alkaline cleaner;
- (5) degreaser;
- (6) abrasive cleaner; or
- (7) other cleaning agent;

according to the cleaning agent manufacturer's label instructions.

(b) For purposes of this section, a violation of subsection

(a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-292*)

410 IAC 7-24-293 Warewashing sinks and machines; use limitation

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 293. (a) A warewashing sink shall not be used for hand washing or as a service sink.

(b) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under section 290 of this rule before and after each time it is used to wash wiping cloths, wash produce, or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under section 303 of this rule before and after using the sink to wash or thaw food.

(c) A warewashing machine shall not be used for laundering linens, wiping cloths, food, floor mats, or other items not specified as an intended use of the machine by its manufacturer.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-293*)

410 IAC 7-24-294 Manual or machine warewashing; chemical sanitization; temperature, pH, concentration, and hardness

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 294. (a) A chemical sanitizer used in a sanitizing solution for a manual or machine warewashing operation at exposure times specified under section 303(b)(3) of this rule shall be listed in 21 CFR 178.1010, used in accordance with the manufacturer's label use instructions as specified in section 441 of this rule, and used as follows:

(1) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

Minimum Concentration	Minimum Temperature		Times (taken from section 303 of this rule)
	pH 10 or less °F	pH 8 or less °F	
ppm			
25	120	120	10 seconds
50	100	75	7 seconds
100	55	55	10 seconds

(2) An iodine solution shall have a:

(A) minimum temperature of seventy-five (75) degrees Fahrenheit;

(B) pH of 5.0 or less or a pH no higher than the level for

which the manufacturer specifies the solution is effective; and

(C) concentration between twelve and one-half (12.5) ppm and twenty-five (25) ppm.

(3) A quaternary ammonium compound solution shall:

(A) have a minimum temperature of seventy-five (75) degrees Fahrenheit;

(B) have a concentration as specified under section 443 of this rule and as indicated by the manufacturer's use directions included in the labeling; and

(C) be used only in water with five hundred (500) ppm hardness or less or in water having a hardness no greater than specified by the manufacturer's label.

(4) If another solution of a chemical specified under subdivisions (1) through (3) is used, the owner or operator of a retail food establishment shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved.

(5) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

(6) If chemical sanitizer is used in the retail food establishment, the chemical sanitizer must be present in the establishment.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-294*)

410 IAC 7-24-295 Equipment food-contact surfaces, nonfood-contact surfaces, and utensils

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 295. (a) Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(b) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(c) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of:

- (1) dust;
- (2) dirt;
- (3) food residue; and
- (4) other debris;

and shall be cleaned at a frequency necessary to preclude accumulation of soil residue.

(d) For purposes of this section, a violation of subsection (a) or (b) is a critical item.

(e) For purposes of this section, a violation of subsection

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(c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-295*)

410 IAC 7-24-296 Equipment food-contact surfaces and utensils; cleaning frequency

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 296. (a) Equipment food-contact surfaces and utensils shall be cleaned as follows:

(1) Except as specified in subsection (b), before each use with a different type of raw animal food such as the following:

- (A) Beef.
- (B) Fish.
- (C) Lamb.
- (D) Pork.
- (E) Poultry.

(2) Each time there is a change from working with raw foods to working with ready-to-eat foods.

(3) Between uses with raw fruits and vegetables and with potentially hazardous food.

(4) Before using or storing a food temperature measuring device.

(5) At any time during the operation when contamination may have occurred.

(b) Subsection (a)(1) does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under section 182 of this rule than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.

(c) Except as specified in subsection (d), if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four (4) hours.

(d) Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four (4) hours if the following applies:

(1) In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under section 139 through 160, 162 through 167, 169 through 183, 185 through 191, 193 through 200, 203, 234, 236, 245 through 247, or 249 of this rule and the containers are cleaned when they are empty.

(2) Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one (1) of the temperatures in the following chart and:

(A) The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature:

Temperature	Cleaning Frequency
41°F or less	24 hours

> 41°F - 45°F	20 hours
> 45°F - 50°F	16 hours
> 50°F - 55°F	10 hours

(B) The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the retail food establishment.

(3) Containers in serving situations, such as salad bars, delis, and cafeteria lines:

(A) hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under section 139 through 160, 162 through 167, 169 through 183, 185 through 191, 193 through 200, 203, 234, 236, 245 through 247, or 249 of this rule;

(B) are intermittently combined with additional supplies of the same food that is at the required temperature; and

(C) are cleaned at least every twenty-four (24) hours.

(4) Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under section 139 through 160, 162 through 167, 169 through 183, 185 through 191, 193 through 200, 203, 234, 236, 245 through 247, or 249 of this rule.

(5) Equipment is used for storage of packaged or unpackaged food, such as a reach-in refrigerator, and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues.

(6) The cleaning schedule is approved based on consideration of the following:

(A) Characteristics of the equipment and its use.

(B) The type of food involved.

(C) The amount of food residue accumulation.

(D) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease.

(7) In-use utensils are intermittently stored in a container of water in which the water is maintained at one hundred thirty-five (135) degrees Fahrenheit or more and the utensils and container are cleaned at least every twenty-four (24) hours or at a frequency necessary to preclude accumulation of soil residues.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-296*)

410 IAC 7-24-297 Not potentially hazardous food contact surfaces cleaning frequency

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 297. (a) Except when dry cleaning methods are used

as specified under section 299 of this rule, surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned as follows:

- (1) At any time when contamination may have occurred.
- (2) At least every twenty-four (24) hours for iced tea dispensers and consumer self-service utensils, such as tongs, scoops, or ladles.
- (3) Before restocking consumer self-service equipment and utensils, such as condiment dispensers and display containers.
- (4) In equipment, such as ice bins and beverage dispensing nozzles, and enclosed components of equipment, such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
 - (A) at a frequency specified by the manufacturer; or
 - (B) absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-297*)

410 IAC 7-24-298 Cooking and baking equipment

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 298. (a) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every twenty-four (24) hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in section 296(d)(6) of this rule.

(b) The cavities and door seals of microwave ovens shall be cleaned at least every twenty-four (24) hours by using the manufacturer's recommended cleaning procedure.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-298*)

410 IAC 7-24-299 Dry cleaning

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 299. (a) If used, dry cleaning methods, such as brushing, scraping, and vacuuming, shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

(b) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-299*)

410 IAC 7-24-300 Precleaning

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 300. (a) Food debris on equipment and utensils shall be:

- (1) scrapped over a waste disposal unit or garbage receptacle; or
- (2) removed in a warewashing machine with a prewash cycle.

(b) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-300*)

410 IAC 7-24-301 Wet cleaning

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 301. (a) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary, such as the application of one (1) of the following:

- (1) Detergents containing wetting agents and emulsifiers.
- (2) Acid, alkaline, or abrasive cleaners.
- (3) Hot water.
- (4) Brushes.
- (5) Scouring pads.
- (6) High-pressure sprays.
- (7) Ultrasonic devices.

(b) The washing procedures selected shall be based on the following:

- (1) The type and purpose of the equipment or utensil.
- (2) The type of soil to be removed.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-301*)

410 IAC 7-24-302 Rinsing procedures

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 302. (a) Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one (1) of the following procedures:

- (1) Use of a distinct, separate water rinse after washing and before sanitizing if using:
 - (A) a three (3) compartment sink;

(B) alternative manual warewashing equipment equivalent to a three (3) compartment sink as specified in section 270(c) of this rule; or

(C) a three (3) step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment.

(2) Use of a detergent-sanitizer as specified under section 275 of this rule if using:

(A) alternative warewashing equipment as specified in section 270(c) of this rule that is approved for use with a detergent-sanitizer; or

(B) a warewashing system for CIP equipment.

(3) Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two (2) compartment sink operation.

(4) If using a warewashing machine that does not recycle the sanitizing solution as specified under subdivision (5), or alternative manual warewashing equipment, such as sprayers, use of a nondistinct water rinse that is:

(A) integrated in the application of the sanitizing solution; and

(B) wasted immediately after each application.

(5) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-302*)

410 IAC 7-24-303 Cleaning and sanitizing food contact surfaces

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 303. (a) Utensils and food-contact surfaces of equipment shall be sanitized immediately after cleaning.

(b) After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

(1) hot water manual operations by immersion for at least thirty (30) seconds as specified under section 274 of this rule;

(2) hot water mechanical operations by being cycled through equipment that is set up as specified under section 283, 285, or 286 of this rule and achieving a utensil surface temperature of one hundred sixty (160) degrees Fahrenheit as measured by an irreversible registering temperature indicator; or

(3) chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under section 294 of this rule by providing:

(A) except as specified under clause (B), an exposure time of at least ten (10) seconds for a chlorine solution

specified under section 294(a)(1) of this rule;

(B) an exposure time of at least seven (7) seconds for a chlorine solution of fifty (50) ppm that has a pH of 10 or less and a temperature of at least one hundred (100) degrees Fahrenheit or a pH of 8 or less and a temperature of at least seventy five (75) degrees Fahrenheit;

(C) an exposure time of at least thirty (30) seconds for other chemical sanitizing solutions; or

(D) an exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in section 82 of this rule.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-303*)

410 IAC 7-24-304 Equipment and utensils; air drying required

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 304. (a) After cleaning and sanitizing, equipment and utensils:

(1) shall be air-dried or used after adequate draining as specified in 21 CFR 178.1010(a), before contact with food; and

(2) may not be cloth-dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-304*)

410 IAC 7-24-305 Ventilation hood systems; filters

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 305. (a) Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-305*)

410 IAC 7-24-306 Ventilation hood systems; drip prevention

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 306. (a) Exhaust ventilation hood systems in food preparation and warewashing areas, including components, such as foods, fans, guards, and ducting, shall be designed to prevent grease or condensation from draining or dripping onto the following:

- (1) Food.
- (2) Equipment.
- (3) Utensils.
- (4) Linens.
- (5) Single-service and single-use articles.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-306*)

410 IAC 7-24-307 Ventilation hood systems; adequacy

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 307. (a) Ventilation hood systems and devices shall meet the requirements of the Indiana department of fire and building services and be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-307*)

410 IAC 7-24-308 Design of heating, ventilating, and air conditioning system vents

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 308. (a) Heating, ventilating, and air conditioning systems shall be designed and installed so that makeup air intake and exhaust vents do not cause contamination of:

- (1) food;
- (2) food-contact surfaces;
- (3) equipment; or
- (4) utensils.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-308*)

410 IAC 7-24-309 Mechanical ventilation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 309. (a) Mechanical ventilation shall be provided in accordance with requirements of the Indiana department of fire and building services and shall be of sufficient capacity to keep rooms free of the following:

- (1) Excessive heat.
- (2) Steam.
- (3) Condensation.
- (4) Vapors.
- (5) Obnoxious odors.
- (6) Smoke.
- (7) Fumes.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-309*)

410 IAC 7-24-310 Cleaning ventilation systems

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 310. (a) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by the following:

- (1) Dust.
- (2) Dirt.
- (3) Other materials.

(b) If vented to the outside, ventilation systems may not create a:

- (1) public health hazard;
- (2) nuisance; or
- (3) unlawful discharge.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-310*)

410 IAC 7-24-311 Clothes washers and dryers

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 311. (a) Except as specified in subsection (b), if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(b) If on-premises laundering is limited to wiping cloths intended to be used wet, or wiping cloths are air-dried as specified under section 316 of this rule, a mechanical clothes washer and dryer need not be provided.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-311*)

410 IAC 7-24-312 Specifications for laundering

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 312. (a) Linens that do not come in direct contact with food shall be laundered between operations if they become:

- (1) wet;
- (2) sticky; or
- (3) visibly soiled.

(b) Cloth gloves used as specified in section 246(d) of this rule shall be laundered before being used with a different type of raw animal food, such as the following:

- (1) Beef.
- (2) Lamb.

- (3) Pork.
- (4) Fish.

(c) Linens and napkins that are used as specified under section 236 of this rule and cloth napkins shall be laundered between each use.

(d) Wet wiping cloths shall be laundered daily.

(e) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

(f) For purposes of this section, a violation of subsection (a), (b), (c), (d), or (e) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-312*)

410 IAC 7-24-313 Mechanical washing

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 313. (a) Except as specified in subsection (b), linens shall be mechanically washed.

(b) In retail food establishments in which only wiping cloths are laundered as specified in section 311(b) of this rule, the wiping cloths may be laundered in a:

- (1) mechanical washer;
 - (2) sink designated only for laundering wiping cloths; or
 - (3) warewashing or food preparation sink;
- that is cleaned as specified under section 290 of this rule.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-313*)

410 IAC 7-24-314 Use of laundry facilities

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 314. (a) Except as specified in subsection (b), laundry facilities on the premises of a retail food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(b) Separate laundry facilities located on the premises for the purpose of general laundering, such as for institutions providing boarding and lodging, may also be used for laundering retail food establishment items.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-314*)

410 IAC 7-24-315 Equipment, clothes washers, dryers, and storage cabinets

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 315. (a) Except as specified in subsection (b), equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located as follows:

(1) In the following:

- (A) Locker rooms.
- (B) Toilet rooms.
- (C) Garbage rooms.
- (D) Mechanical rooms, when contamination is likely to occur.

(2) Under the following:

- (A) Sewer lines that are not shielded to intercept potential drips.
- (B) Leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed.
- (C) Open stairwells.
- (D) Other sources of contamination.

(b) A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(c) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no:

- (1) exposed food;
- (2) clean equipment, utensils, and linens; and
- (3) unwrapped single-service and single-use articles.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-315*)

410 IAC 7-24-316 Wiping cloths; air drying locations

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 316. (a) Wiping cloths laundered in a retail food establishment that does not have a mechanical clothes dryer as specified in section 311(b) of this rule shall be air-dried in a location and in a manner that prevents contamination of the following:

- (1) Food.
- (2) Equipment.
- (3) Utensils.
- (4) Linens.
- (5) Single-service and single-use articles.
- (6) Wiping cloths.

This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under section 294 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-316*)

410 IAC 7-24-317 Lubricants for food-contact surfaces

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 317. (a) Lubricants shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-317*)

410 IAC 7-24-318 Protection of equipment

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 318. (a) Equipment shall be reassembled so that food-contact surfaces are not contaminated.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-318*)

410 IAC 7-24-319 Case lot handling equipment; moveability

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 319. (a) Equipment, such as:

- (1) dollies;
- (2) pallets;
- (3) racks; and
- (4) skids;

used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot shall be designed to be moved by hand or by conveniently available equipment, such as hand trucks and forklifts, to allow for routine cleaning and maintenance of the premises.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-319*)

410 IAC 7-24-320 Water source

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 320. (a) Drinking water shall be obtained from a source that meets the quality standards as specified in 327 IAC 8-2.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-320*)

410 IAC 7-24-321 System flushing and disinfection

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 321. (a) A drinking water system shall be flushed and disinfected before being placed in service after the following:

- (1) Construction, repair, or modification.
- (2) An emergency situation, such as a flood, that may introduce contaminants to the system.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-321*)

410 IAC 7-24-322 Design, construction, and installation of approved plumbing system and cleanable fixtures

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 322. (a) A plumbing system shall:

- (1) be designed, constructed, and installed according to applicable Indiana plumbing code; and
- (2) meet the capacity needs of the retail food establishment.

(b) A plumbing fixture, such as a:

- (1) hand washing facility;
- (2) toilet; or
- (3) urinal;

shall be easily cleanable.

(c) For purposes of this section, a violation of subsection (a) is a critical item.

(d) For purposes of this section, a violation of subsection (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-322*)

410 IAC 7-24-323 Approved plumbing system materials

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 323. (a) A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law.

(b) Water treatment devices shall be made of safe materials.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-323*)

410 IAC 7-24-324 Plumbing system maintained in good repair

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 324. (a) A plumbing system shall be:

- (1) repaired according to law; and
- (2) maintained in good repair.

(b) For purposes of this section, a violation of subsection (a)(1) is a critical item.

(c) For purposes of this section, a violation of subsection (a)(2) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-324*)

410 IAC 7-24-325 Bottled drinking water

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 325. (a) Bottled drinking water used or sold in a retail food establishment shall be obtained from approved sources in accordance with 21 CFR 129.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-325*)

410 IAC 7-24-326 Nondrinking water

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 326. (a) Nondrinking water shall be used only for nonculinary purposes, such as the following:

- (1) Air conditioning.
- (2) Nonfood equipment cooling.
- (3) Fire protection.
- (4) Irrigation.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-326*)

410 IAC 7-24-327 Water sampling

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 327. (a) Except when used as specified under section 326 of this rule, water from a nonpublic water system shall be sampled and tested at least annually and as required by state water quality regulations.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-327*)

410 IAC 7-24-328 Water sample report

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 328. (a) The most recent sample report for the nonpublic water system shall be provided to the regulatory authority upon request.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-328*)

410 IAC 7-24-329 Capacity

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 329. (a) The water source and system shall be of sufficient capacity to meet the water demands of the retail food establishment.

(b) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the retail food establishment.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-329*)

410 IAC 7-24-330 Water pressure

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 330. (a) Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under section 332(a)(1) and 332(a)(2) of this rule to a temporary retail food establishment or in response to a temporary interruption of a water supply need not be under pressure.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-330*)

410 IAC 7-24-331 Water distribution, delivery, and retention system

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 331. (a) Water shall be received from the source through the use of any of the following:

- (1) A public water supply main.
- (2) An approved private water supply system.
- (3) One (1) or more of the following, which shall be constructed, maintained, and operated according to law:
 - (A) A nonpublic water supply main, water pumps, pipes, hoses, connections, and other appurtenances.
 - (B) Water transport vehicles.
 - (C) Water containers.
 - (D) An alternative water supply.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-331*)

410 IAC 7-24-332 Alternative water supply

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 332. (a) Water meeting the requirements specified under section 320, 321, or 325 through 330 of this rule shall be made available for a mobile facility, for a temporary retail food establishment without a permanent water supply, and for a retail food establishment with a temporary interruption of its water supply through any of the following:

- (1) A supply of containers of commercially bottled drinking water.
- (2) One (1) or more closed portable water containers.
- (3) An enclosed vehicular water tank.
- (4) An on-premises water storage tank.
- (5) Piping, tubing, or hoses connected to an adjacent approved source.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-332*)

410 IAC 7-24-333 Ice units; separation of drains

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 333. (a) Liquid waste drain lines may not pass through an ice machine or ice storage bin.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-333*)

410 IAC 7-24-334 Backsiphonage prevention; air gap

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 334. (a) An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than one (1) inch.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-334*)

410 IAC 7-24-335 Backsiphonage prevention device; design standard

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 335. (a) A backsiphonage prevention device installed on a water supply system shall meet the standards in 675 IAC 16-1.3 for:

- (1) construction;
- (2) installation;
- (3) maintenance;

(4) inspection; and
(5) testing;
for that specific application and type of device.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-335*)

410 IAC 7-24-336 Backsiphonage prevention device; when required

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 336. (a) A plumbing system shall be installed to preclude backsiphonage of a solid, liquid, or gas contaminant into the water supply system at each point of use at the retail food establishment, including on hose bibbs with or without a hose attached, and backsiphonage prevention is required by plumbing code by:

- (1) providing an air gap as specified under section 334 of this rule; or
- (2) installing an approved backsiphonage prevention device as specified under section 335 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-336*)

410 IAC 7-24-337 Backflow prevention device, carbonator

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 337. (a) If not provided with an air gap as specified under section 368 of this rule, a double check valve with an intermediate vent preceded by a screen of not less than one hundred (100) mesh to twenty-five and four-tenths (25.4) millimeters (one hundred (100) mesh to one (1) inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.

(b) A single or double check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under subsection (a).

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-337*)

410 IAC 7-24-338 Backsiphonage prevention device; location

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 338. (a) A backsiphonage prevention device shall be located so that it may be serviced and maintained.

(b) For purposes of this section, a violation of subsection

(a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-338*)

410 IAC 7-24-339 Prohibiting a cross connection

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 339. (a) Except for firefighting purposes, a person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

(b) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

(c) For purposes of this section, a violation of subsection (a) is a critical item.

(d) For purposes of this section, a violation of subsection (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-339*)

410 IAC 7-24-340 Water conditioning device; design

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 340. (a) A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-340*)

410 IAC 7-24-341 Water conditioning device; location

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 341. (a) A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-341*)

410 IAC 7-24-342 Hand washing facility; water temperature and flow

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 342. (a) A hand washing facility shall be equipped to provide water having a temperature of at least one hundred (100) degrees Fahrenheit by means of a mixing valve or

combination faucet.

(b) A steam mixing valve may not be used at a hand washing sink.

(c) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.

(d) An automatic hand washing facility shall be installed in accordance with manufacturer's instructions.

(e) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-342*)

410 IAC 7-24-343 Hand washing sinks; numbers and capacities

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 343. (a) Except as specified in subsection (b):

(1) at least one (1) hand washing sink;

(2) a number of hand washing sinks necessary for their convenient use by employees in areas specified under section 344 of this rule; and

(3) not fewer than the number of hand washing sinks required by 675 IAC 16-1.3; shall be provided.

(b) If approved and capable of removing the types of soils encountered in the food operations involved, automatic hand washing facilities may be substituted for hand washing sinks in a retail food establishment that has at least one (1) hand washing sink.

(c) If approved, when food exposure is limited and hand washing sinks cannot be made available, employees in some mobile or temporary retail food establishments or at some vending machine locations may use other effective means for hand washing.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-343*)

410 IAC 7-24-344 Hand washing facility; location

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 344. (a) A hand washing facility shall be accessible at all times and located as follows:

(1) To allow convenient use by employees in:

(A) food preparation;

(B) food dispensing; and

(C) warewashing; areas.

- (2) In, or immediately adjacent to, toilet rooms.
- (3) So as to not contaminate food-contact surfaces.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-344*)

410 IAC 7-24-345 Hand washing facility; maintenance

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 345. (a) A hand washing facility shall be maintained clean at all times for employee use.

(b) A hand washing facility may not be used for purposes other than hand washing.

(c) A hand washing facility shall be used in accordance with manufacturer's instructions.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-345*)

410 IAC 7-24-346 Availability of hand washing cleanser

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 346. (a) Each hand washing sink or group of two (2) adjacent sinks shall be provided with a supply of hand cleaning:

- (1) liquid;
- (2) powder; or
- (3) bar;

soap.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-346*)

410 IAC 7-24-347 Hand drying provisions

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 347. (a) Each hand washing sink or group of adjacent sinks shall be provided with one (1) of the following:

- (1) Individual, disposable towels.
- (2) A continuous towel system that supplies the user with a clean towel.
- (3) A heated-air hand drying device.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-347*)

410 IAC 7-24-348 Restrictions on hand washing aids and devices

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 348. (a) A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the hand washing aids and devices required for a hand washing sink as specified under sections 346, 347, and 386(c) of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-348*)

410 IAC 7-24-349 Waste receptacles for disposable towels

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 349. (a) A hand washing sink or group of adjacent sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under section 386(c) of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-349*)

410 IAC 7-24-350 Toilets and urinals

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 350. (a) At least one (1) toilet and not fewer than the toilets required by law shall be provided. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified in laws of the Indiana department of fire and building services.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-350*)

410 IAC 7-24-351 Toilet room receptacle; covered

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 351. (a) A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-351*)

410 IAC 7-24-352 Enclosed toilet rooms

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 352. (a) A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door, except that this requirement does not apply to a toilet room that is located outside a retail food establishment and does not open directly into the retail food

establishment, such as a toilet room that is provided by the management of a shopping mall.

(b) Toilet room doors shall be kept closed, except during cleaning and maintenance.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-352*)

410 IAC 7-24-353 Toilet rooms accessibility

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 353. (a) Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-353*)

410 IAC 7-24-354 Availability of toilet tissue

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 354. (a) A supply of toilet tissue shall be available at each toilet.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-354*)

410 IAC 7-24-355 Service sink

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 355. (a) At least one (1) service sink or one (1) curbed cleaning facility equipped with:

- (1) a floor drain;
- (2) hot water having a temperature of at least one hundred (100) degrees Fahrenheit; and
- (3) cold water;

shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste. The service sink or curbed cleaning facility, or both, shall not be used in substitution for or as a warewashing or food preparation sink.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-355*)

410 IAC 7-24-356 Scheduling inspection and service for a water system device

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 356. (a) A device, such as a water treatment device or backflow preventer, shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be provided to the regulatory authority upon request.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-356*)

410 IAC 7-24-357 Water reservoir of fogging devices; cleaning

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 357. (a) A reservoir that is used to supply water to a device, such as a produce fogger, shall be:

- (1) maintained in accordance with manufacturer's specifications; and
- (2) cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection (b), whichever is more stringent.

(b) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

- (1) Draining and complete disassembly of the water and aerosol contact parts.
- (2) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution.
- (3) Flushing the complete system with water to remove the detergent solution and particulate accumulation.
- (4) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least fifty (50) ppm hypochlorite solution.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-357*)

410 IAC 7-24-358 Mobile water tank and mobile retail food establishment water tank materials

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 358. (a) Materials that are used in the construction of a mobile water tank, mobile retail food establishment water tank, and appurtenances shall be as follows:

- (1) Safe.
- (2) Durable, corrosion-resistant, and nonabsorbent.
- (3) Finished to have a smooth, easily cleanable surface.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-358*)

410 IAC 7-24-359 Enclosed system; sloped to drain

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 359. (a) A mobile water tank shall be as follows:

- (1) Enclosed from the filling inlet to the discharge outlet.
- (2) Sloped to an outlet that allows complete drainage of the tank.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-359*)

410 IAC 7-24-360 Inspection and cleaning port; protected and secured

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 360. (a) If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and as follows:

- (1) Flanged upward at least one-half (1/2) inch.
- (2) Equipped with a port cover assembly that is as follows:
 - (A) Provided with a gasket and a device for securing the cover in place.
 - (B) Flanged to overlap the opening and sloped to drain.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-360*)

410 IAC 7-24-361 "V" type threads; use limitation

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 361. (a) A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-361*)

410 IAC 7-24-362 Tank vent; protected

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 362. (a) If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

- (1) sixteen (16) mesh to one (1) inch screen or equivalent when the vent is in a protected area; or
- (2) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-362*)

410 IAC 7-24-363 Inlet and outlet; sloped to drain

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 363. (a) A water tank and its inlet and outlet shall be sloped to drain.

(b) A water tank inlet shall be positioned so that it is protected from contaminants, such as:

- (1) waste discharge;
- (2) road dust;
- (3) oil; or
- (4) grease.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-363*)

410 IAC 7-24-364 Hose; construction and identification

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 364. (a) A hose used for conveying drinking water from a water tank shall be as follows:

- (1) Safe.
- (2) Durable, corrosion-resistant, and nonabsorbent.
- (3) Resistant to the following:
 - (A) Pitting.
 - (B) Chipping.
 - (C) Crazing.
 - (D) Scratching.
 - (E) Scoring.
 - (F) Distortion.
 - (G) Decomposition.
- (4) Finished with a smooth interior surface.
- (5) Clearly and durably identified as to its use if not permanently attached.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-364*)

410 IAC 7-24-365 Filter; compressed air

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 365. (a) A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-365*)

410 IAC 7-24-366 Protective cover or device

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 366. (a) A:

- (1) cap and keeper chain;
 - (2) closed cabinet;
 - (3) closed storage tube; or
 - (4) other approved protective cover or device;
- shall be provided for a water inlet, outlet, and hose.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-366*)

410 IAC 7-24-367 Mobile retail food establishment's water tank inlet

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 367. (a) A mobile retail food establishment's water tank inlet shall be as follows:

- (1) Three-fourths ($\frac{3}{4}$) inch in inner diameter or less.
- (2) Provided with a hose connection of a size or type that will prevent its use for any other service.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-367*)

410 IAC 7-24-368 System flushing and disinfection

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 368. (a) A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after the following:

- (1) Construction.
- (2) Repair.
- (3) Modification.
- (4) Periods of nonuse.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-368*)

410 IAC 7-24-369 Using a pump and hoses; backsiphonage prevention

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 369. (a) A person shall operate a water tank, pump, and hoses so that backsiphonage and other contamination of the water supply are prevented.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-369*)

410 IAC 7-24-370 Protecting inlet, outlet, and hose fitting

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 370. (a) If not in use, a water tank hose inlet and outlet fitting shall be protected using a cover or device as specified under section 366 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-370*)

410 IAC 7-24-371 Water tank, pump, and hoses dedication

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 371. (a) Except as specified in subsection (b), a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.

(b) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-371*)

410 IAC 7-24-372 Sewage holding tank of mobile retail food establishment; capacity and drainage

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 372. (a) A sewage holding tank in a mobile retail food establishment shall be as follows:

- (1) Sized fifteen percent (15%) larger in capacity than the water supply tank.
- (2) Sloped to a drain that is one (1) inch in inner diameter or greater, equipped with a shut-off valve.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-372*)

410 IAC 7-24-373 Removing mobile retail food establishment wastes

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 373. (a) Sewage and other liquid wastes shall be removed from a mobile retail food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-373*)

410 IAC 7-24-374 Establishment drainage systems

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 374. (a) Retail food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under section 322(a) of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-374*)

410 IAC 7-24-375 Conveying sewage

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 375. (a) Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of:

- (1) sewage transport vehicles;
- (2) waste retention tanks;
- (3) pumps;
- (4) pipes;
- (5) hoses; and
- (6) connections;

that are constructed, maintained, and operated according to law.

(b) Except for mobile or temporary retail food establishments, after the effective date of this rule, an owner or operator of a new retail food establishment shall not utilize a holding tank as a means of sewage disposal.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-375*)

410 IAC 7-24-376 Approved sewage disposal system

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 376. (a) Sewage shall be disposed through an approved facility that is:

- (1) a public sewage treatment plant; or
- (2) an individual sewage disposal system that is:
 - (A) sized;
 - (B) constructed;
 - (C) maintained; and
 - (D) operated;
 according to law.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-376*)

410 IAC 7-24-377 Direct connection, prohibited

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 377. (a) Except as specified in this section, a direct connection may not exist between the sewage system and a

drain originating from equipment in which food, portable equipment, or utensils are placed.

(b) If allowed under the Indiana plumbing code, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the:

- (1) machine is located within five (5) feet of a trapped floor drain; and
- (2) machine outlet is connected to the inlet side of a properly vented floor drain trap.

(c) If allowed by law, a warewashing or culinary sink may have a direct connection.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-377*)

410 IAC 7-24-378 Grease trap

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 378. (a) If used, a grease trap shall be located to be easily accessible for cleaning.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-378*)

410 IAC 7-24-379 Flushing a waste retention tank

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 379. (a) A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-379*)

410 IAC 7-24-380 Other liquid wastes and rainwater

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 380. (a) Condensate drainage and other nonsewage liquids and rainwater shall be drained from the point of discharge to disposal according to law.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-380*)

410 IAC 7-24-381 Refuse, recyclables, and returnables; indoor storage area

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 381. (a) If located within the retail food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under section 399, 401 through 404, 406 through 409, 413, or 414 of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-381*)

410 IAC 7-24-382 Outdoor storage surface; refuse, recyclables, and returnables

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 382. (a) An outdoor storage surface for refuse, recyclables, and returnables shall be as follows:

- (1) Constructed of nonabsorbent material, such as concrete or asphalt.
- (2) Smooth, durable, and sloped to drain.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-382*)

410 IAC 7-24-383 Outdoor enclosure; refuse, recyclables, and returnables

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 383. (a) If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-383*)

410 IAC 7-24-384 Receptacles

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 384. (a) Except as specified in subsection (b), receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be as follows:

- (1) Durable.
- (2) Cleanable.
- (3) Insect-resistant.
- (4) Rodent-resistant.
- (5) Leakproof.
- (6) Nonabsorbent.

(b) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the retail food establishment or within closed outside receptacles.

(c) For purposes of this section, a violation of subsection

(a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-384*)

410 IAC 7-24-385 Outside receptacles

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 385. (a) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the retail food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(b) Receptacles and waste handling units for refuse and recyclables, such as an on-site compactor, shall be installed so that accumulation of debris and rodent/insect attraction or harborage are minimized. Such units shall be installed so that effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-385*)

410 IAC 7-24-386 Storage areas, rooms, and receptacles; capacity and availability

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 386. (a) An inside storage room and area, outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

(b) A receptacle shall be provided in each area of the retail food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(c) If disposable towels are used at hand washing sinks, a waste receptacle shall be located at each sink or group of adjacent sinks.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-386*)

410 IAC 7-24-387 Cleaning implements and supplies

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 387. (a) Except as specified in subsection (b), suitable cleaning implements and supplies, such as:

- (1) high pressure pumps;
- (2) hot water;
- (3) steam; and
- (4) detergent;

shall be provided as necessary for effective cleaning of

receptacles and waste handling units for refuse, recyclables, and returnables.

(b) If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-387*)

410 IAC 7-24-388 Storage areas, redeeming machines, receptacles, and waste handling units; location

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 388. (a) An area designated for:

- (1) refuse;
- (2) recyclables;
- (3) returnables; and
- (4) except as specified in subsection (b), a redeeming machine for recyclables or returnables;

shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

(b) A redeeming machine may be located in the packaged food storage area or consumer area of a retail food establishment if:

- (1) food;
- (2) equipment;
- (3) utensils;
- (4) linens; and
- (5) single-service and single-use articles;

are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(c) The location of receptacles and waste handling units for refuse, recyclables, and returnables may not:

- (1) create a public health hazard or nuisance; or
- (2) interfere with the cleaning of adjacent space.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-388*)

410 IAC 7-24-389 Storing refuse, recyclables, and returnables

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 389. (a) Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(b) For purposes of this section, a violation of subsection

(a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-389*)

410 IAC 7-24-390 Storage areas, enclosures, and receptacles; good repair

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 390. (a) Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-390*)

410 IAC 7-24-391 Outside storage prohibitions

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 391. (a) Except as specified in subsection (b), refuse receptacles not meeting the requirements specified under section 384(a) of this rule, such as:

- (1) receptacles that are not rodent-resistant;
- (2) unprotected plastic bags and paper bags; or
- (3) baled units;

that contain materials with food residue may not be stored outside.

(b) Cardboard or other packaging material that:

- (1) does not contain food residues; and
- (2) is awaiting regularly scheduled delivery to a recycling or disposal site;

may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-391*)

410 IAC 7-24-392 Covering receptacles

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 392. (a) Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

- (1) inside the retail food establishment if the receptacles and units:
 - (A) contain food residue and are not in continuous use; or
 - (B) after they are filled; and
- (2) with tight-fitting lids or doors if kept outside the retail food establishment.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-392*)

410 IAC 7-24-393 Using drain plugs

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 393. (a) Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-393*)

410 IAC 7-24-394 Maintaining refuse areas and enclosures

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 394. (a) A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under section 426 of this rule, and clean.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-394*)

410 IAC 7-24-395 Cleaning receptacles

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 395. (a) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate:

- (1) food;
- (2) equipment;
- (3) utensils;
- (4) linens; or
- (5) single-service and single-use articles;

and wastewater shall be disposed of in a manner that does not create a public health hazard or nuisance.

(b) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from:

- (1) developing a build-up of soil; or
- (2) becoming attractants for insects and rodents.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-395*)

410 IAC 7-24-396 Frequency

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 396. (a) Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-396*)

410 IAC 7-24-397 Receptacles or vehicles

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 397. (a) Refuse, recyclables, and returnables shall be removed from the premises by way of:

- (1) portable receptacles that are constructed and maintained according to law; or
- (2) a transport vehicle that is:
 - (A) constructed;
 - (B) maintained; and
 - (C) operated;according to law.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-397*)

410 IAC 7-24-398 Community or individual facility

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 398. (a) Solid waste not disposed of through the sewage system, such as through grinders and pulpers, shall be:

- (1) recycled or disposed of in an approved public or private community recycling or refuse facility; or
- (2) disposed of in an individual refuse facility, such as a landfill or incinerator that is:
 - (A) sized;
 - (B) constructed;
 - (C) maintained; and
 - (D) operated;according to law.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-398*)

410 IAC 7-24-399 Surface characteristics of materials for indoor area construction and repair

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 399. (a) Except as specified in subsection (b), materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be as follows:

- (1) Smooth, durable, and easily cleanable for areas where retail food establishment operations are conducted.
- (2) Closely woven and easily cleanable carpet for carpeted areas.
- (3) Nonabsorbent for areas subject to moisture, such as

the following:

- (A) Food preparation areas.
- (B) Walk-in refrigerators.
- (C) Warewashing areas.
- (D) Employee toilet rooms.
- (E) Mobile retail food establishment servicing areas.
- (F) Areas subject to flushing or spray cleaning methods.

(b) In a temporary food establishment:

(1) if graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with:

- (A) mats;
- (B) removable platforms;
- (C) duckboards; or
- (D) other suitable materials;

that are effectively treated to control dust and mud; and
(2) walls and ceilings may be constructed of a material that protects the interior from:

- (A) the weather; and
- (B) windblown dust and debris.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-399*)

410 IAC 7-24-400 Surface characteristics of materials for outdoor area construction and repair

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 400. (a) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, gravel, or other materials that have been effectively treated to:

- (1) minimize dust;
- (2) facilitate maintenance; and
- (3) prevent muddy conditions.

(b) Exterior surfaces of buildings and mobile retail food establishments shall:

- (1) be of weather-resistant materials; and
- (2) comply with law.

(c) Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under section 382 or 383 of this rule.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-400*)

410 IAC 7-24-401 Installation and restrictions of floor carpeting

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 401. (a) A floor covering, such as carpeting or similar

material, may not be installed as a floor covering in:

- (1) food preparation areas;
- (2) walk-in refrigerators;
- (3) warewashing areas;
- (4) toilet room areas where:
 - (A) hand washing sinks;
 - (B) toilets; and
 - (C) urinals;
- are located;
- (5) refuse storage rooms; or
- (6) other areas where the floor is subject to:
 - (A) moisture;
 - (B) flushing; or
 - (C) spray cleaning methods.

(b) If carpeting is installed as a floor covering in areas other than those specified under subsection (a), it shall be as follows:

- (1) Securely attached to the floor with a durable mastic by using:
 - (A) a stretch and tack method; or
 - (B) another method.
- (2) Installed:
 - (A) tightly against the wall under the coving; or
 - (B) away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by:
 - (i) metal stripping; or
 - (ii) some other means.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-401*)

410 IAC 7-24-402 Cleanability of floors, walls, and ceilings

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 402. (a) Except as specified under section 401 of this rule, the:

- (1) floors;
- (2) floor coverings;
- (3) walls;
- (4) wall coverings; and
- (5) ceilings;

shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-402*)

410 IAC 7-24-403 Cleanability of floors, walls, and ceilings relative to utility lines

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Proposed Rules

Sec. 403. (a) Utility service lines and pipes may not be unnecessarily exposed.

(b) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(c) Exposed horizontal utility service lines and pipes may not be installed on the floor.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-403*)

410 IAC 7-24-404 Cleanability of floors and wall junctures; coved, and closed or sealed

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 404. (a) In retail food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than one thirty-second ($\frac{1}{32}$) inch.

(b) The floors in retail food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-404*)

410 IAC 7-24-405 Cleaning floors; dustless methods

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 405. (a) Except as specified in subsection (b), only dustless methods of cleaning shall be used, such as the following:

- (1)** Wet cleaning.
- (2)** Vacuum cleaning.
- (3)** Mopping with treated dust mops.
- (4)** Sweeping using a broom and dust-arresting compounds.

(b) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned as follows:

- (1)** Without the use of dust-arresting compounds.
- (2)** In the case of liquid spills or drippage, with the use of a small amount of absorbent compound, such as sawdust or diatomaceous earth, applied immediately before spot cleaning.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-405*)

410 IAC 7-24-406 Mats and duckboards as floor coverings

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 406. (a) Mats and duckboards shall be designed to be removable and easily cleanable.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-406*)

410 IAC 7-24-407 Wall and ceiling coverings and coatings

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 407. (a) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

(b) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-407*)

410 IAC 7-24-408 Wall and ceiling attachments

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 408. (a) Except as specified in subsection (b), attachments to walls and ceilings, such as:

- (1)** light fixtures;
- (2)** mechanical room ventilation system components;
- (3)** vent covers;
- (4)** wall-mounted fans;
- (5)** decorative items; and
- (6)** other attachments;

shall be easily cleanable.

(b) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-408*)

410 IAC 7-24-409 Exposure of wall and ceiling studs, joists, and rafters

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 409. (a) Studs, joists, and rafters may not be exposed in areas subject to moisture. This requirement does not

apply to temporary retail food establishments.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-409*)

410 IAC 7-24-410 Functionality of light bulbs and protective shielding

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 410. (a) Except as specified in subsection (b), light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is:

- (1) exposed food;
- (2) clean equipment, utensils, and linens; or
- (3) unwrapped single-service and single-use articles.

(b) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages if the:

- (1) integrity of the packages cannot be affected by broken glass falling onto them; and
- (2) packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(c) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-410*)

410 IAC 7-24-411 Lighting intensity

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 411. (a) The light intensity shall be at least seventy (70) foot-candles:

- (1) on all food preparation surfaces; and
- (2) at equipment or utensil-washing work levels.

(b) The light intensity shall be at least twenty (20) foot-candles at a distance of thirty (30) inches above the floor in the following:

- (1) Utensil and equipment storage areas.
- (2) Sink and toilet areas.
- (3) Walk-in refrigeration units.
- (4) Dry food storage areas.
- (5) All other areas.

This includes the areas where food is provided for consumer self-service, such as buffets and salad bars, and rooms during periods of cleaning.

(c) The light intensity shall be at least twenty (20) foot-candles inside equipment, such as reach-in and under-

counter refrigerators.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-411*)

410 IAC 7-24-412 Design and installation of insect control devices

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 412. (a) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(b) Insect control devices shall be installed so that:

- (1) the devices are not located over a food preparation area; and
- (2) dead insects and insect fragments are prevented from being impelled onto or falling on:
 - (A) exposed food;
 - (B) clean equipment, utensils, and linens; and
 - (C) unwrapped single-service and single-use articles.

(c) For purposes of this section, a violation of subsection (a), (b), or (c) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-412*)

410 IAC 7-24-413 Protected outer openings

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 413. (a) Except as specified in this section, outer openings of a retail food establishment shall be protected against the entry of insects and rodents by:

- (1) filling or closing holes and other gaps along floors, walls, and ceilings;
- (2) closed, tight-fitting windows; and
- (3) solid, self-closing, and tight-fitting doors.

(b) Subsection (a) does not apply if a retail food establishment opens into:

- (1) a larger structure, such as a mall, airport, or office building; or
- (2) an attached structure, such as a porch;

and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(c) External emergency exit doors that are:

- (1) solid and tight-fitting when closed; and
- (2) restricted from nonemergency use;

do not need to have a self-closing device installed.

(d) Except as specified in subsections (b) and (e), if the windows or doors of a retail food establishment, or of a larger structure within which a retail food establishment is located, are kept open for ventilation or other purposes or

a temporary retail food establishment is not provided with windows and doors as specified under subsection (a), the openings shall be protected against the entry of insects and rodents by:

- (1) sixteen (16) mesh to one (1) inch screens;
- (2) properly designed and installed air curtains; or
- (3) other effective means.

(e) Subsection (d) does not apply if flying insects and other pests are absent due to the location of:

- (1) the establishment;
- (2) the weather; or
- (3) other limiting conditions.

(f) For purposes of this section, a violation of subsection (a), (b), (c), or (d) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-413*)

410 IAC 7-24-414 Protective barriers on exterior walls and roofs

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 414. (a) Perimeter walls and roofs of a retail food establishment shall effectively protect the establishment from the:

- (1) weather; and
- (2) entry of:
 - (A) insects;
 - (B) rodents; and
 - (C) other animals.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-414*)

410 IAC 7-24-415 Controlling pests

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 415. (a) The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

- (1) routinely inspecting incoming shipments of food and supplies;
- (2) routinely inspecting the premises for evidence of pests;
- (3) using methods, if pests are found, such as trapping devices or other means of pest control as specified under section 441, 449, or 450 of this rule; and
- (4) eliminating harborage conditions.

(b) For purposes of this section, a violation of subsection (a)(3) is a critical item.

(c) For purposes of this section, a violation of subsection (a)(1), (a)(2), or (a)(4) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-415*)

410 IAC 7-24-416 Removing dead or trapped birds, insects, rodents, and other pests

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 416. (a) Dead or trapped:

- (1) birds;
- (2) insects;
- (3) rodents; and
- (4) other pests;

shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or attraction of pests.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-416*)

410 IAC 7-24-417 Designation of dressing areas or lockers

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 417. (a) Dressing rooms or dressing areas shall be designated and used if employees routinely change their clothes in the establishment.

(b) Lockers or other suitable facilities shall be provided and used for the orderly storage of employees' clothing and other possessions.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-417*)

410 IAC 7-24-418 Designated employee areas

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 418. (a) Areas designated for employees to eat, drink, and use tobacco shall be located so that:

- (1) food;
 - (2) equipment;
 - (3) linens; and
 - (4) single-service and single-use articles;
- are protected from contamination.

(b) Lockers or other suitable facilities shall be located in a designated room or area where contamination of:

- (1) food;
 - (2) equipment;
 - (3) utensils;
 - (4) linens; and
 - (5) single-service and single-use articles;
- cannot occur.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-418*)

410 IAC 7-24-419 Medicine restrictions and storage

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 419. (a) Only those medicines that are necessary for the health of employees shall be allowed in a retail food establishment. This section does not apply to medicines that are stored or displayed for retail sale.

(b) Medicines that are in a retail food establishment for the employees' use shall be:

- (1) labeled as specified under section 437 of this rule; and
- (2) located to prevent the contamination of:
 - (A) food;
 - (B) equipment;
 - (C) utensils;
 - (D) linens; and
 - (E) single-service and single-use articles.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-419*)

410 IAC 7-24-420 Refrigerated medicines; storage

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 420. (a) Medicines belonging to employees or to children in a child care center that require refrigeration and are stored in a food refrigerator shall be:

- (1) stored in a package or container;
- (2) kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and
- (3) located so they are inaccessible to children.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-420*)

410 IAC 7-24-421 Storage of first aid supplies

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 421. (a) First aid supplies that are in a retail food establishment for the employees' use shall be labeled as specified under section 437 of this rule.

(b) First aid supplies shall be stored in a kit or a container that is located to prevent the contamination of the following:

- (1) Food.
- (2) Equipment.
- (3) Utensils.
- (4) Linens.
- (5) Single-service and single-use articles.

(c) For purposes of this section, a violation of subsection

(a) or (b) is a critical or noncritical based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or environmental health hazard. (*Indiana State Department of Health; 410 IAC 7-24-421*)

410 IAC 7-24-422 Storage of other personal care items

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 422. (a) Except as specified under section 420 or 421 of this rule, employees shall store their personal care items in facilities as specified under section 417(b) of this rule.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-422*)

410 IAC 7-24-423 Private homes and living or sleeping quarters; use prohibited

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 423. (a) The following may not be used for retail food establishment operations:

- (1) A private home.
- (2) A room used as living or sleeping quarters.
- (3) An area directly opening into a room used as living or sleeping quarters.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-423*)

410 IAC 7-24-424 Separation of living or sleeping quarters

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 424. (a) Living or sleeping quarters located on the premises of a retail food establishment, such as those provided for lodging registration clerks or resident managers, shall be separated from rooms and areas used for retail food establishment operations by complete partitioning and solid self-closing doors.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-424*)

410 IAC 7-24-425 Storing maintenance tools

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 425. (a) Maintenance tools, such as brooms, mops, vacuum cleaners, and similar items, shall be stored so they do not contaminate the following:

- (1) Food.
- (2) Equipment.

- (3) Utensils.
- (4) Linens.
- (5) Single-service and single-use articles.

(b) These same maintenance tools shall be stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-425*)

410 IAC 7-24-426 Maintaining premises of unnecessary items and litter

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 426. (a) The premises shall be free of litter and items that are unnecessary to the operation or maintenance of the establishment, such as equipment that is nonfunctional or no longer used.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-426*)

410 IAC 7-24-427 Overhead protection on outdoor servicing areas

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 427. (a) Servicing areas shall be provided with overhead protection, except that areas used only for the loading of water or the discharge of sewage and other liquid waste through the use of a closed system of hoses, need not be provided with overhead protection.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-427*)

410 IAC 7-24-428 Outdoor walking and driving surfaces graded to drain

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 428. (a) Exterior walking and driving surfaces shall be graded to drain.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-428*)

410 IAC 7-24-429 Outdoor refuse areas; curbed and graded to drain

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 429. (a) Outdoor refuse areas shall be:

- (1) constructed in accordance with law; and
- (2) curbed and graded to drain to collect and dispose of liquid waste that results from:
 - (A) the refuse; and
 - (B) cleaning the area and waste receptacles.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-429*)

410 IAC 7-24-430 Repairing premises, structures, and attachments

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 430. (a) The physical facilities shall be maintained in good repair.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-430*)

410 IAC 7-24-431 Physical structures; restrictions and frequency of cleaning

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 431. (a) The physical facilities shall be cleaned as often as necessary to keep them clean.

(b) Cleaning shall be done during periods when the least amount of food is exposed, such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.

(c) For purposes of this section, a violation of subsection (a) or (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-431*)

410 IAC 7-24-432 Cleaning maintenance tools and preventing contamination

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 432. (a) Food preparation sinks, hand washing sinks, and warewashing equipment may not be used for the following:

- (1) Cleaning of maintenance tools.
- (2) Preparation or holding of maintenance materials.
- (3) Disposal of mop water and similar liquid wastes.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-432*)

410 IAC 7-24-433 Drying mops

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 433. (a) After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-433*)

410 IAC 7-24-434 Limitation of absorbent materials on floors

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 434. (a) Except as specified in section 405(b) of this rule:

- (1) sawdust;
- (2) wood shavings;
- (3) granular salt;
- (4) baked clay;
- (5) diatomaceous earth; or
- (6) similar materials;

may not be used on floors.

(b) For purposes of this section, a violation of subsection (a) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-434*)

410 IAC 7-24-435 Animal handling prohibited

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 435. (a) Except as specified in subsection (b), food employees may not care for or handle animals that may be present, such as patrol dogs, service animals, or pets that are allowed as specified in section 436(b)(2) through 436(b)(5) of this rule.

(b) Food employees with service animals may handle or care for their service animals, and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under section 128 or 129 of this rule.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-435*)

410 IAC 7-24-436 Prohibiting animals

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 436. (a) Except as specified in this section, live animals may not be allowed in the operational areas of a retail food establishment.

(b) Live animals may be allowed if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result, as in the

following situations:

(1) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems.

(2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas.

(3) In areas that are not used for food preparation and are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal.

(4) Pets in the common dining areas of institutional care facilities, such as nursing homes, assisted living facilities, or residential care facilities, at times other than during meals if:

(A) effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

(B) condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(C) dining areas, including tables, countertops, and similar surfaces, are effectively cleaned before the next meal service.

(5) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a:

(A) variety store that sells pets; or

(B) tourist park that displays animals.

(c) Live or dead fish bait may be stored if contamination of:

(1) food;

(2) clean equipment, utensils, and linens; and

(3) unwrapped single-service and single-use articles; cannot result.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-436*)

410 IAC 7-24-437 Identifying information on original containers

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 437. (a) Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-437*)

410 IAC 7-24-438 Working containers; common name

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 438. (a) Working containers used for storing poisonous or toxic materials, such as cleaners and sanitizers taken from bulk supplies, shall be clearly and individually identified with the common name of the material.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-438*)

410 IAC 7-24-439 Separation of poisonous or toxic materials

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 439. (a) Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

- (1) separating the poisonous or toxic materials by spacing or partitioning; and
- (2) locating the poisonous or toxic materials in an area that is not above:
 - (A) food;
 - (B) equipment;
 - (C) utensils;
 - (D) linens; and
 - (E) single-service or single-use articles.

This section does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(b) For purposes of this section, a violation of subsection (a)(1) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or environmental health hazard.

(c) For purposes of this section, a violation of subsection (a)(2) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-439*)

410 IAC 7-24-440 Restriction of poisonous or toxic materials

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 440. (a) Only those poisonous or toxic materials that are required for the operation and maintenance of a retail food establishment, such as for the:

- (1) cleaning and sanitizing of equipment and utensils; and
- (2) control of insects and rodents;

shall be allowed in a retail food establishment.

(b) Subsection (a) does not apply to packaged poisonous or toxic materials that are for retail sale.

(c) For purposes of this section, a violation of subsection (a) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or environmental health hazard.

(d) For purposes of this section, a violation of subsection (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-440*)

410 IAC 7-24-441 Conditions of poisonous or toxic materials use

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 441. (a) Poisonous or toxic materials shall be used according to the following:

- (1) The law and this rule.
- (2) Manufacturer's use directions included in labeling and, for a pesticide, manufacturer's label instructions that state that use is allowed in a retail food establishment.
- (3) The conditions of certification for use of the pest control materials.
- (4) Additional conditions that may be established by the regulatory authority.

(b) Poisonous or toxic materials shall be applied so that:

- (1) a hazard to employees or other persons is not constituted; and
- (2) contamination, including toxic residues due to drip, drain, fog, splash, or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented and, for a restricted use pesticide, this is achieved by:

- (A) removing the items;
 - (B) covering the items with impermeable covers; or
 - (C) taking other appropriate preventive actions;
- and cleaning and sanitizing equipment and utensils after application.

(c) A restricted use pesticide shall be applied only by the following:

- (1) An applicator certified according to law.
- (2) A person under the direct supervision of a certified applicator.

(d) For purposes of this section, a violation of subsection (a), (b), or (c) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-441*)

410 IAC 7-24-442 Poisonous or toxic material containers

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 442. (a) A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-442*)

410 IAC 7-24-443 Sanitizers; criteria

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 443. (a) Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 21 CFR 178.1010.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-443*)

410 IAC 7-24-444 Chemicals for washing fruits and vegetables; criteria

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 444. (a) Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-444*)

410 IAC 7-24-445 Boiler water additives; criteria

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 445. (a) Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-445*)

410 IAC 7-24-446 Drying agents; criteria

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 446. (a) Drying agents used in conjunction with sanitization shall contain only components that are listed as one (1) of the following:

- (1) Generally recognized as safe for use in food as specified in 21 CFR 182 or 21 CFR 184.
- (2) Generally recognized as safe for the intended use as specified in 21 CFR 186.

(3) Approved for use as a drying agent under a prior sanction specified in 21 CFR 181.

(4) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR 175 through 21 CFR 178.

(5) Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39.

(b) When sanitization is with chemicals, the approval required under subsection (a)(3) or (a)(5) or the regulation as an indirect food additive required under subsection (a)(4), shall be specifically for use with chemical sanitizing solutions.

(c) For purposes of this section, a violation of subsection (a) or (b) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-446*)

410 IAC 7-24-447 Incidental food contact with lubricants

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 447. (a) Lubricants shall meet the requirements specified in 21 CFR 178.3570 if they are used on the following:

- (1) Food-contact surfaces.
 - (2) Bearings and gears located:
 - (A) on or within food-contact surfaces; or
 - (B) so that lubricants may:
 - (i) leak;
 - (ii) drip; or
 - (iii) be forced;
- into food or onto food-contact surfaces.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-447*)

410 IAC 7-24-448 Restricted use pesticides; criteria

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 448. (a) Restricted use pesticides specified under section 441(c) of this rule shall meet the requirements specified in law and rules of the office of the Indiana state chemist.

(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-448*)

410 IAC 7-24-449 Rodent bait stations

Authority: IC 16-42-5-5

Affected: IC 16-42-5

Sec. 449. (a) Rodent bait shall be contained in a covered, tamper-resistant bait station.

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(b) For purposes of this section, a violation of subsection (a) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-449*)

410 IAC 7-24-450 Use of tracking powders; pest control and monitoring

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 450. (a) A toxic tracking powder pesticide may not be used in a retail food establishment.

(b) If used, a nontoxic tracking powder, such as talcum or flour, may not contaminate the following:

- (1) Food.
- (2) Equipment.
- (3) Utensils.
- (4) Linens.
- (5) Single-service and single-use articles.

(c) For purposes of this section, a violation of subsection (a) is a critical item.

(d) For purposes of this section, a violation of subsection (b) is a noncritical item. (*Indiana State Department of Health; 410 IAC 7-24-450*)

410 IAC 7-24-451 Separate storage and display of poisonous or toxic materials

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 451. (a) Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

- (1) separating the poisonous or toxic materials by spacing or partitioning; and
- (2) locating the poisonous or toxic materials in an area that is not above:
 - (A) food;
 - (B) equipment;
 - (C) utensils;
 - (D) linens; and
 - (E) single-service or single-use articles.

(b) For purposes of this section, a violation of subsection (a)(1) is a critical or noncritical item based on the determination of whether or not the violation significantly contributes to food contamination, an illness, or environmental health hazard.

(c) For purposes of this section, a violation of subsection (a)(2) is a critical item. (*Indiana State Department of Health; 410 IAC 7-24-451*)

410 IAC 7-24-452 Incorporation by reference

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 452. (a) When used in this article, references to the following publications shall mean the version of that publication listed in this subsection. The following publications are hereby incorporated by reference:

- (1) 7 CFR 56 (January 1, 2004 Edition).
- (2) 9 CFR 317 (January 1, 2003 Edition).
- (3) 9 CFR 318.7 (January 1, 1999 Edition).
- (4) 9 CFR 319 (January 1, 2003 Edition).
- (5) 9 CFR 424.21 (January 1, 1999 Edition).
- (6) 9 CFR 381, Subpart N (January 1, 2003 Edition).
- (7) 9 CFR 381.147 (January 1, 2003 Edition).
- (8) 9 CFR 590 (January 1, 2003 Edition).
- (9) 21 CFR 70 (April 1, 2003 Edition).
- (10) 21 CFR 101 (April 1, 2003 Edition).
- (11) 21 CFR 109 (April 1, 2003 Edition).
- (12) 21 CFR 113 (April 1, 2003 Edition).
- (13) 21 CFR 120 (April 1, 2003 Edition).
- (14) 21 CFR 129 (April 1, 2003 Edition).
- (15) 21 CFR 130 (April 1, 2003 Edition).
- (16) 21 CFR 131 through 21 CFR 169 (April 1, 2003 Edition).
- (17) 21 CFR 170 through 21 CFR 186 (April 1, 2003 Edition).
- (18) 21 CFR 1030.10 (April 1, 2003 Edition).
- (19) 40 CFR 152, (July 1, 2003 Edition).
- (20) 40 CFR 185 (July 1, 1999 Edition).
- (21) Food, Drug and Cosmetic Act, section 201(s).
- (22) Food, Drug and Cosmetic Act, section 201(t).
- (23) Food, Drug and Cosmetic Act, section 409.
- (24) Food, Drug and Cosmetic Act, section 706.
- (25) Food Establishment Plan Review Guide, Food and Drug Administration and Conference for Food Protection (2000 Edition).
- (26) Pre-operational Guide for Temporary Food Establishments, Food and Drug Administration and Conference for Food Protection (2000 Edition).
- (27) United States Standards, Grades, and Weight classes for Shell Eggs (AMS 56.200 et seq.) (effective April 6, 1995). Copies are available from the United States Department of Agriculture, Agricultural Marketing Service, Poultry Programs, P.O. Box 964, Washington, D.C. 20090-6456.
- (28) National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish (1999 Revision). Copies are available from the United States Food and Drug Administration, Center for Food Safety and Applied Nutrition, Shellfish Sanitation Program, HFS-628, 200 "C" Street, S.W., Washington, D.C. 20204.
- (29) Food and Drug Administration Center for Drug Evaluation and Research Approved Drug Products with Therapeutic Equivalence Evaluation, 24 Edition.
- (30) Hazard Analysis and Critical Control Point Princi-

ples and Application Guidelines (August 14, 1997 Edition).
(31) National Sanitation Foundation (NSF) Protocol P155
(January 8, 2003 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. (Indiana State Department of Health; 410 IAC 7-24-452)

SECTION 2. 410 IAC 7-20 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 23, 2004 at 1:30 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 a proposed new rule to establish minimum sanitary standards for the operation of retail food establishments. 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 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #04-62

DIGEST

Amends 410 IAC 7-23-1 to update the schedule of civil penalties for retail food production and processing. Effective 30 days after filing with the secretary of state.

410 IAC 7-23-1

SECTION 1. 410 IAC 7-23-1, AS ADDED AT 27 IR 1167, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

Rule 23. Food Establishment: Schedule of Civil Penalties for Violations

410 IAC 7-23-1 Schedule of civil penalties

Authority: IC 16-19-3-4; IC 16-42-5-28
Affected: IC 4-21.5-3-8; IC 16-42-5

Sec. 1. (a) The Indiana state department of health may commence an action under IC 4-21.5-3-8 to levy civil penalties against a person who:

- (1) fails to comply with IC 16-42-5, ~~410 IAC 7-20~~; or 410 IAC 7-21, or **410 IAC 7-24**; or
- (2) interferes with or obstructs the Indiana state department of health or its designated agent in the performance of duties pursuant to under IC 16-42-5, ~~410 IAC 7-20~~; or 410 IAC 7-21, or **410 IAC 7-24**.

(b) A civil penalty in an amount in the appropriate range specified in subsection (d), (e), or (f), or any combination thereof, may be sought for each day of each violation.

(c) In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the Indiana state department of health will consider, but is not limited to, the following:

- (1) The potential for harm or imminent threat to public health.
- (2) The extent of deviation from statutory or regulatory requirements.
- (3) Degree of willfulness or negligence.
- (4) History of noncompliance.

The absence of direct harm will not result in assessment of a lower penalty for a violation.

(d) Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a food establishment, as defined in IC 16-42-5, then they shall be assessed in accordance with the following:

INDIANA CODE (IC) SECTION	PENALTY RANGE
IC 16-42-5-6; IC 16-42-5-11; IC 16-42-5-19; IC 16-42-5-21	\$0 to \$1,000
IC 16-42-5-7; IC 16-42-5-12; IC 16-42-5-13; IC 16-42-5-14; IC 16-42-5-15; IC 16-42-5-17; IC 16-42-5-18; IC 16-42-5-20	\$0 to \$500
IC 16-42-5-8; IC 16-42-5-9; IC 16-42-5-10; IC 16-42-5-16; IC 16-42-5-22	\$0 to \$100

(e) Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a retail food establishment, as defined in ~~410 IAC 7-20~~, **410 IAC 7-24**, then they shall be assessed in accordance with the following:

SECTIONS OF 410 IAC 7-20	PENALTY RANGE
98; 107; 117; 118; 124; 136; 161; 340; 382; 427	\$0-\$500
94; 97; 114; 119; 120; 121; 122; 123; 125; 126; 127; 128; 129; 130; 132; 135; 137; 138; 140; 141; 158(a); 162; 163; 164; 167; 171; 173; 175; 177; 180; 181; 182(d); 183; 184; 254; 257; 261; 276; 291; 292; 293; 297; 301; 302; 304; 307; 308; 310; 311; 315; 317; 318(1); 335; 337; 402; 407; 408; 409; 410; 411; 412; 413; 414; 415; 416; 417; 418; 420; 428; 429; 430; 431	\$0-\$250

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95; 100; 105; 106; 109; 112; 113; 116; 131;
159; 160; 172; 174; 182(a); 182(b); 182(c);
195; 198; 219; 232; 264(a); 265; 275; 294;
329; 383; 406

96; 99; 108; 110; 111; 115; 133; 134; 139; 142;
143; 144; 146; 147; 148; 149; 150; 151; 152;
153; 154; 155; 156; 157; 158(b); 158(c); 165;
166; 168; 169; 170; 178; 179; 185; 186; 187;
188; 189; 190; 191; 192; 193; 194; 196; 197;
199; 200; 201; 202; 203; 204; 205; 206; 207;
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217; 218; 220; 221; 222; 223; 224; 225; 226;
227; 228; 229; 230; 233; 234; 235; 236; 237;
238; 239; 240; 241; 242; 243; 244; 245; 247;
248; 249; 250; 251; 252; 253; 255; 256; 258;
259; 260; 262; 263; 264(b); 264(c); 266; 267;
268; 269; 270; 271; 272; 273; 274; 277; 278;
279; 280; 281; 282; 283; 284; 285; 286; 287;
288; 289; 290; 295; 296; 298; 299; 300; 303;
305; 306; 309; 312; 313; 314; 316; 318(2);
319; 320; 321; 322; 323; 324; 325; 326; 327;
328; 330; 332; 333; 336; 338; 339; 341; 342;
343; 344; 345; 346; 347; 348; 349; 350; 351;
352; 353; 354; 355; 356; 357; 358; 359; 360;
361; 362; 363; 364; 365; 366; 367; 368; 369;
370; 371; 372; 373; 374; 375; 376; 377; 378;
379; 380; 381; 384; 385; 386; 387; 388; 389;
390; 391; 392; 393; 394; 395; 396; 397; 398;
399; 400; 401; 403; 404; 405; 419; 421; 422;
423; 425

\$0-\$100

\$0-\$50

119; 122; 130; 133; 134; 138; 140; 145; 148;
158; 159; 161; 163; 170; 174; 175; 176; 177;
178; 179; 180; 181(b); 181(c); 185; 197; 198;
199; 202; 203; 206; 207; 208; 209; 210; 211;
212; 213; 214; 215; 216; 217; 218; 219; 220;
221; 222; 223; 224; 225; 226; 227; 228; 230;
231; 232; 233; 234; 235; 236; 237; 238; 239;
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282; 283; 284; 285; 286; 287; 288; 289; 290;
291; 292; 293; 295(b); 295(c); 298; 301; 302;
304; 305; 306; 307; 308; 309; 310; 311; 312;
313; 314; 315; 316; 317; 318; 324(a)(2); 327;
328; 330; 331; 332; 333; 335; 338; 340; 341;
342; 345; 346; 347; 348; 349; 351; 352; 353;
354; 355; 356; 358; 359; 360; 361; 362; 363;
364; 365; 366; 367; 369; 371; 372; 373; 378;
379; 380; 381; 382; 383; 384; 385; 386; 387;
388; 389; 390; 391; 392; 393; 394; 395; 396;
397; 398; 399; 400; 401; 402; 403; 404; 405;
406; 407; 408; 409; 410; 411; 412; 413; 414;
416; 417; 418; 419; 420; 421; 425; 426; 427;
428; 429; 430; 431; 432; 433; 434; 449; 451

\$0-\$50

(f) Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a wholesale food establishment, as defined in 410 IAC 7-21, then they shall be assessed in accordance with the following:

SECTIONS OF 410 IAC 7-24	PENALTY RANGE	SECTIONS OF 410 IAC 7-21	PENALTY RANGE
107; 121; 129; 139; 142; 165; 171; 182; 269; 376; 423	\$0-\$500	35; 36(1); 36(2); 36(3); 36(4); 36(5); 39(b)(8); 40; 41; 42(b); 45(c); 45(n); 45(p); 45(q); 45(r); 46; 47(9)(B); 48; 49(d); 49(e); 50(d)	\$0-\$1,000
108; 109; 110; 111; 114; 117; 120; 137; 141(d); 143; 144; 146; 147; 149; 150; 151; 153; 154; 155; 157; 160; 162; 164; 166; 167; 168; 169; 172; 173; 181(a); 183; 186; 187; 188; 189; 193; 195; 196; 205; 241; 274; 294; 303; 320; 321; 322; 323; 324(a)(1); 325; 329; 334; 336; 337; 339; 343; 344; 350; 357; 375; 377; 415; 437; 438; 439; 440; 441; 442; 443; 444; 445; 446; 447; 448; 450	\$0-\$250	36(8); 37; 38; 39(a); 39(b)(1); 39(b)(2); 39(b)(3); 39(b)(4); 39(b)(5); 39(b)(6); 39(b)(7); 42(a); 42(d); 42(e); 44(i); 45(a); 45(b); 45(d); 45(e); 45(f); 45(g); 45(h); 45(i); 45(j); 45(k); 45(l); 45(m); 45(o); 45(s); 47(2); 47(3); 47(4); 47(5); 47(6); 47(7); 47(9)(A); 47(9)(C); 50(c); 50(f); 51(a); 51(c); 51(d)	\$0-\$500
113; 115; 118; 123; 128; 131; 132; 135; 136; 141(a); 141(b); 141(c); 152; 156; 190; 191; 201; 204; 229; 240; 259; 264; 295(a); 296; 297; 326; 368; 424; 435; 436	\$0-\$100	36(6); 36(7); 42(c); 43(b); 43(c); 43(d); 44(c); 44(e); 44(h); 47(1); 47(8); 49(a); 49(b); 49(c); 50(b); 51(b)	\$0-\$250
		36(9); 43(a); 43(e); 44(a); 44(b); 44(d); 44(f); 44(g); 45(t); 47(10); 47(11); 47(12); 47(13); 47(14); 47(15)	\$0-\$100

(g) After reinspection and determining the appropriate penalty based on the schedule in subsection (d), (e), or (f), or any combination thereof, the Indiana state department of health, or its authorized representative, may adjust the penalty to reflect a good faith effort to comply as follows:

(1) Each individual penalty will be multiplied by the number of days the particular violation has been documented by the Indiana state department of health, or its authorized representative.

(2) Penalties for violations documented in two (2) consecutive inspections by the Indiana state department of health, or its authorized representative, shall be assessed on the basis that the violations have remained uncorrected over the period of time between the two (2) inspections.

(3) If the person found in violation has requested reinspection and has produced substantive evidence that the violation or violations have been corrected, the penalties shall be assessed for the period between initial discovery of violation and the receipt of request for reinspection.

(4) Penalties for all violations documented in an inspection or series of inspections at an establishment will be totaled and sought under one (1) cause of action.

(h) After filing an action pursuant to under IC 4-21.5, and in an attempt to resolve violations of said Indiana Code and this rule without resort to a hearing, the Indiana state department of health may negotiate and enter into agreed orders. An agreed order may suspend all or part of the civil penalty calculated under the requirements and deadlines established in the agreed order. (*Indiana State Department of Health; 410 IAC 7-23-1; filed Dec 4, 2003, 3:05 p.m.: 27 IR 1167*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 23, 2004 at 1:00 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 a proposed amendment to update the schedule of civil penalties for retail food production and processing. 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 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Proposed Rule
LSA Document #03-231

DIGEST

Adds 460 IAC 1-10 to describe the caretaker support program

and provide for the coordination and administration of the program. Effective 30 days after filing with the secretary of state.

460 IAC 1-10

SECTION 1. 460 IAC 1-10 IS ADDED TO READ AS FOLLOWS:

Rule 10. Caretaker Support Program

460 IAC 1-10-1 Scope and applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4

Affected: IC 12-10-1; IC 12-10.5-1

Sec. 1. (a) This rule sets forth provisions governing the administration and coordination of the caretaker support program.

(b) This rule applies to the following:

(1) The bureau of aging and in-home services.

(2) Area agencies on aging.

(3) Service providers under contract with an area agency on aging to provide services under this program.

(4) Caretakers and care receivers who receive benefits of this program.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-10-1)

460 IAC 1-10-2 Funding source; services provided

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4

Affected: IC 12-10-1; IC 12-10.5-1

Sec. 2. (a) Both federal and state funding may be used for this program. Since federal and state statutes applicable to this program differ, the source of funding may determine the services provided and the people to whom those services may be provided.

(b) If state funding is used, caretaker support program services include the following:

(1) Information for caretakers about available services.

(2) Assistance to caretakers in gaining access to the services.

(3) Individual counseling, organization of support groups, and caretaker training to assist caretakers in making decisions and solving problems in the individual's role as caretaker.

(4) Respite care to offer caretakers temporary relief from caretaker responsibilities.

(c) If federal funding is used, caretaker support program services include each of the services in subsection (b)(1) through (b)(4), plus supplemental services provided on a limited basis to complement the care provided by caretakers. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-10-2*)

460 IAC 1-10-3 Program administration; administrative functions and responsibilities of BAIHS

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 3. (a) As funding allows, BAIHS will administer the program under contract with the area agencies on aging.

(b) In administration of the program, the functions and responsibilities of BAIHS include the following:

- (1) The review and approval of annual program plans submitted by area agencies on aging.
- (2) The allocation to area agencies on aging of funds appropriated for the provision of program services.
- (3) The establishment and maintenance of policies and procedures for the operation of the program and the provision of services.
- (4) The development and maintenance of fiscal and service data collection and procedures for collecting information on families and services provided.
- (5) The monitoring of local programs for compliance with applicable state and federal laws and approved area agency on aging program plans.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-10-3)

460 IAC 1-10-4 Program administration; administrative functions and responsibilities of the area agencies on aging

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 4. (a) As funding allows, each area agency on aging shall administer a program under this rule in its planning and service area.

(b) In the administration of the program, the function and responsibilities of the area agency on aging include the following:

- (1) The development and submission of a program plan under section 5 of this rule.
- (2) The coordination of service development and delivery under this rule with other appropriate agencies and organizations in the community with special efforts to develop and maintain an effective network of local support for caretakers.
- (3) The timely collection and submission from area agencies on aging on a quarterly basis to BAIHS that includes information on individuals served, units of service, and expenditures on forms or in the format provided by the BAIHS.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-10-4)

460 IAC 1-10-5 Program plans

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 5. Each area agency on aging shall annually submit a plan, as part of its area plan, that includes the following information:

(1) A description of area agency on aging caretaker programs that include strategies for the strengthening or developing of a local network of family caretaker resources. The use of network models that may involve local voluntary groups, faith-based groups, and health care organizations active in the areas of Alzheimer's disease, support groups for family caretakers and grandparents raising grandchildren, and other similar organizations is strongly encouraged.

(2) An explanation of how the area agency on aging will assure that, in providing services, priority shall be given to older individuals with greatest social and economic need, with particular attention to low-income older individuals and older individuals providing care and support to persons with mental retardation and related developmental disabilities. The provision of services may be affected as follows:

(A) If state funding is used, services will be provided to individuals at least sixty-five (65) years of age who are caretakers or who are taking care of individuals with special needs at least eighteen (18) years of age and unable to perform at least three (3) activities of daily living.

(B) If federal funding is used, priority will be given to persons at least eighteen (18) years of age who are caretakers of individuals at least sixty (60) years of age who are unable to perform at least two (2) activities of daily living, and older adults, grandparents, or stepgrandparents at least sixty (60) years of age who are caretakers of children eighteen (18) years of age or younger.

(3) A description of strategies for carrying out caretaker education so that different kinds of caretaker education needs are effectively met. Caretaker education shall involve to the extent possible the participation of available community resources. These efforts may include support groups if appropriate.

(4) A twelve (12) month operating budget on a form provided by BAIHS.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-10-5)

460 IAC 1-10-6 Program compliance

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 6. Failure of an area agency on aging to comply with corrective action requirements resulting from compliance monitoring by BAIHS may lead to sanctions imposed by BAIHS when, after discussion, the area agency on aging and the BAIHS are unable to reach a mutually satisfactory resolution of the noncompliance issue. *(Division of Disability,*

Aging, and Rehabilitative Services; 460 IAC 1-10-6)

460 IAC 1-10-7 Cost share

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 7. The client cost share will be calculated based on an application form that may be provided by BAIHS. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-10-7*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 23, 2004 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Room W451 Conference Room A, Indianapolis, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on a proposed new rule at 460 IAC 1-10 concerning the caretaker support program, which provides for the coordination and administration of the program. If an accommodation is required to allow an individual with a disability to participate in this meeting, please contact Kevin Wild at (317) 233-2582 at least 48 hours prior to the meeting. 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.

Rachel McGeever
 General Counsel
 Division of Disability, Aging, and Rehabilitative
 Services

**TITLE 511 INDIANA STATE BOARD OF
 EDUCATION**

Proposed Rule
 LSA Document #04-101
 DIGEST

Amends 511 IAC 1-3-1 to add an additional average daily membership or ADM count to be taken on December 1 for all students and an additional count of students enrolled in special education programs be taken on April 1. Effective 30 days after filing with the secretary of state.

511 IAC 1-3-1

SECTION 1. 511 IAC 1-3-1, PROPOSED TO BE AMENDED AT 27 IR 270, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

511 IAC 1-3-1 Definitions

Authority: IC 20-1-1-6; IC 21-3-1.6-1.1
Affected: IC 21-3-2.1; IC 21-3-4.5-1

Sec. 1. (a) "ADA flat grant" means the distribution of funds provided for in IC 21-3-4.5.

(b) "Additional pupil count" or "APC" means the number of pupils enrolled in programs as specified in ~~IC 21-3-1.6-3~~ **IC 21-3-2.1**.

(c) "Aggregate days of attendance" means the total days of attendance accumulated by all students enrolled in grades K-12.

(d) "Aggregate days of enrollment" means the total student instructional days of enrollment accumulated by all students in grades K-12 during the regular school year.

(e) "Aggregate days of unexcused absence" means the total days of unexcused absence accumulated by all students under eighteen (18) years of age enrolled in grades kindergarten through 12.

(f) "Average daily attendance" or "ADA" means the result of dividing the number of aggregate days of attendance for the reporting period by the number of student instructional days during the reporting period.

(g) "Average daily enrollment" means the result of dividing the aggregate days of enrollment by the number of student instructional days during the regular school year.

(h) "Average daily membership" or "ADM" means the number of pupils with legal settlement in the school corporation enrolled in the school corporation or in a transferee corporation on the second Friday following Labor Day. Kindergarten pupils attending half-time or more shall be counted as one-half (½). **Beginning in the 2004-2005 school year, the ADM shall be adjusted on December 1 of that same year. The board shall monitor changes that occur after the ADM count, in the number of students enrolled in programs for children with disabilities, and shall, on December 1 of that same year and, beginning in the 2004-2005 school year, on April 1 of the following calendar year, make an adjusted count of students enrolled in programs for children with disabilities.**

(i) "Board" means the Indiana state board of education.

(j) "Department" means the department of education.

(k) "Postgraduate student" means a person who has received a high school diploma or its equivalent.

(l) "Reporting period" means:

- (1) for purposes of determining ADA for the ADA flat grant, the three (3) week period beginning the first Monday following Labor Day;
- (2) for purposes of determining ADA for the regular school year, the period beginning the first day of the regular school year and ending the last day of the regular school year;

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- (3) for purposes of determining ADA for summer school, the period beginning the first day of the summer school session and ending the last day of the summer school session; and
(4) for other purposes, the period determined by the board.

(m) "Student attendance rate" means the result of dividing the number of aggregate days of attendance for the regular school year by the number of aggregate days of enrollment.

(n) "Truancy rate" means the result of dividing the number of aggregate days of unexcused absence for the regular school year by the number of aggregate days of enrollment.

(o) "Unexcused absence" means an absence from school that is:

- (1) not authorized by the local school administrator or local school corporation rule; and
- (2) a violation of IC 20-8.1-3.

An out-of-school suspension is not an unexcused absence. (*Indiana State Board of Education; Rule A-1, Sec 1; filed May 8, 1978, 3:21 p.m.: Rules and Regs. 1979, p. 78; filed Mar 15, 1988, 10:45 a.m.: 11 IR 2857; readopted filed Oct 12, 2001, 12:55 p.m.: 25 IR 937*) NOTE: Transferred from the commission on general education (510 IAC 2-1-1) to the Indiana state board of education (511 IAC 1-3-1) by P.L.20-1984, SECTION 206. Effective July 1, 1984.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 22, 2004 at 9:00 a.m., at the Indiana Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on a proposed amendment to 511 IAC 1-3-1 to add an additional average daily membership or ADM count to be taken on December 1 for all students and an additional count of students enrolled in special education programs be taken on April 1. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #03-303

DIGEST

Amends 760 IAC 2-1 through 760 IAC 2-20 to implement updates to the National Association of Insurance Commission-

ers' model regulation, to conform to the Health Insurance Portability and Accountability Act of 1996, to conform to IC 27-1-15.6 and IC 27-1-15.7, and to achieve reciprocity with other states on the licensing of insurance producers. Effective 30 days after filing with the secretary of state.

760 IAC 2-1-1	760 IAC 2-8-4
760 IAC 2-2-1.5	760 IAC 2-8-6
760 IAC 2-2-3.1	760 IAC 2-9-1
760 IAC 2-2-3.2	760 IAC 2-10-1
760 IAC 2-2-3.3	760 IAC 2-13-1
760 IAC 2-2-3.4	760 IAC 2-15-1
760 IAC 2-2-3.5	760 IAC 2-15.5
760 IAC 2-2-3.6	760 IAC 2-16-1
760 IAC 2-2-3.7	760 IAC 2-16.1
760 IAC 2-2-3.8	760 IAC 2-17-1
760 IAC 2-2-8	760 IAC 2-18-1
760 IAC 2-3-1	760 IAC 2-19-2
760 IAC 2-3-2	760 IAC 2-19.5
760 IAC 2-3-4	760 IAC 2-20-10
760 IAC 2-3-6	760 IAC 2-20-31.1
760 IAC 2-3-7	760 IAC 2-20-34
760 IAC 2-3-8	760 IAC 2-20-35
760 IAC 2-4-1	760 IAC 2-20-36.1
760 IAC 2-4-2	760 IAC 2-20-36.2
760 IAC 2-7-1	760 IAC 2-20-37.2
760 IAC 2-8-1	760 IAC 2-20-37.3
760 IAC 2-8-2	760 IAC 2-20-38.1
760 IAC 2-8-3	760 IAC 2-20-42

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

760 IAC 2-1-1 Applicability and scope

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 1. Except as otherwise specifically provided, this article applies to the following:

- (1) All long term care insurance policies, certificates, or subscriber agreements delivered or issued for delivery in Indiana on or after the effective date hereof by insurers.
- (2) Fraternal benefit societies.
- (3) Nonprofit health, hospital, and medical service corporations.
- (4) Prepaid health plans.
- (5) Health maintenance organizations and all similar organizations.

Certain provisions of this article apply only to federally tax-qualified long term care insurance contracts. (*Department of Insurance; 760 IAC 2-1-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 856; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 2. 760 IAC 2-2-1.5 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-1.5 “Activities of daily living” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 1.5. “Activities of daily living” means, at a minimum, the following:

- (1) Bathing.**
- (2) Continence.**
- (3) Dressing.**
- (4) Eating.**
- (5) Toileting.**
- (6) Transferring.**

(Department of Insurance; 760 IAC 2-2-1.5)

SECTION 3. 760 IAC 2-2-3.1 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-3.1 “Bathing” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3.1. “Bathing” means washing oneself by sponge bath or in either a tub or shower, including the task of getting into or out of the tub or shower. *(Department of Insurance; 760 IAC 2-2-3.1)*

SECTION 4. 760 IAC 2-2-3.2 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-3.2 “Cognitive impairment” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3.2. “Cognitive impairment” means a deficiency in:
(1) a person’s short term or long term memory;
(2) orientation as to person, place, and time;
(3) deductive or abstract reasoning; or
(4) judgment;
as it relates to safety awareness. *(Department of Insurance; 760 IAC 2-2-3.2)*

SECTION 5. 760 IAC 2-2-3.3 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-3.3 “Continence” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3.3. “Continence” means the ability to maintain control of bowel and bladder functions or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag. *(Department of Insurance; 760 IAC 2-2-3.3)*

SECTION 6. 760 IAC 2-2-3.4 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-3.4 “Department” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3.4. “Department” means the department of insurance. *(Department of Insurance; 760 IAC 2-2-3.4)*

SECTION 7. 760 IAC 2-2-3.5 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-3.5 “Dressing” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3.5. “Dressing” means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs. *(Department of Insurance; 760 IAC 2-2-3.5)*

SECTION 8. 760 IAC 2-2-3.6 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-3.6 “Eating” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3.6. “Eating” means feeding oneself by getting food into the body:

- (1) from a receptacle, such as a plate or cup;**
- (2) by a feeding tube; or**
- (3) intravenously.**

(Department of Insurance; 760 IAC 2-2-3.6)

SECTION 9. 760 IAC 2-2-3.7 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-3.7 “Federally tax-qualified long term care insurance contract” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3.7. (a) “Federally tax-qualified long term care insurance contract” means an individual or group insurance contract that meets the requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:

- (1) The only insurance protection provided under the contract is coverage of qualified long term care services. A contract shall not fail to satisfy this requirement by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.**
- (2) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this section do not apply to expenses that are reimbursable under Title XVIII of the**

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Social Security Act only as a secondary payor. A contract shall not fail to satisfy the requirements of this section by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(3) The contract is guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

(4) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in subdivision (5).

(5) All refunds of premiums, and all policyholder dividends or similar amounts, under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund on the event of the death of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract.

(6) The contract meets the consumer protection provisions set forth in Section 7702B(g) of the Internal Revenue Code of 1986, as amended.

(b) The term also means the portion of a life insurance contract that provides long term care insurance coverage by rider or as part of the contract and that satisfies the requirements of Section 7702B(b) and 7702B(e) of the Internal Revenue Code of 1986, as amended.

(c) For purposes of this article, “similar policy forms” means all of the long term care insurance policies and certificates issued by an insurer in the same long term care benefit classification as the policy form being considered. Long term care benefit classifications are as follows:

- (1) Institutional long term care benefits only.
- (2) Noninstitutional long term care benefits only.
- (3) Comprehensive long term care benefits.

(Department of Insurance; 760 IAC 2-2-3.7)

SECTION 10. 760 IAC 2-2-3.8 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-2-3.8 “Hands-on assistance” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3.8. “Hands-on assistance” means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activities of daily living. (Department of Insurance; 760 IAC 2-2-3.8)

SECTION 11. 760 IAC 2-2-8 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-2-8 “Skilled nursing care”, “intermediate care”, “personal care”, “home care”, and “other services” defined

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 8. “Skilled nursing care”, “intermediate care”, “personal care”, “home care”, and “other services” shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered. (Department of Insurance; 760 IAC 2-2-8; filed Oct 30, 1992, 12:00 p.m.: 16 IR 857; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 12. 760 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-3-1 Individual long term care policies

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 1. (a) The terms “guaranteed renewable” and “noncancelable” shall be used in an individual long term care insurance policy only with further explanatory language in accordance with the disclosure requirements of 760 IAC 2-4.

(b) A long term care insurance policy issued to an individual shall not contain renewal provisions other than “guaranteed renewable” or “noncancellable”.

(c) The term “guaranteed renewable” may be used only when:

- (1) the insured has the right to continue the long term care insurance in force by the timely payment of premiums;
- (2) ~~when~~ the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force; and
- (3) the insurer cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(d) The term “noncancellable” may be used only when:

- (1) the insured has the right to continue the long term care insurance in force by the timely payment of premiums; and
- (2) the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(e) The term “level premium” may only be used when the insurer does not have the right to change the premium.

(f) In addition to the other requirements of this section, a federally tax-qualified long term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended. (Department of Insurance; 760 IAC 2-3-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 857; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 13. 760 IAC 2-3-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-3-2 Exclusions

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 2. A policy, certificate, or subscriber agreement may not be delivered or issued for delivery in Indiana as long term care insurance if the policy, certificate, or subscriber agreement limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

- (1) Preexisting conditions or diseases.
- (2) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease or related degenerative and dementing illnesses.
- (3) Alcoholism and drug addiction.
- (4) Illness, treatment, or medical condition arising out of:
 - (A) war or act of war (whether declared or undeclared);
 - (B) participation in a felony, riot, or insurrection;
 - (C) service in the armed forces or units auxiliary thereto;
 - (D) suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
 - (E) aviation (this exclusion applies only to nonfare paying passengers).
- (5) Treatment provided in a government facility unless otherwise required by law as follows:
 - (A) Services for which benefits are available under any of the following:
 - (i) Medicare or other governmental program (except Medicaid).
 - (ii) Any state or federal workers' compensation.
 - (iii) Employer's liability or occupational disease law.
 - (iv) Any motor vehicle no-fault law.
 - (B) Services provided by a member of the covered person's immediate family.
 - (C) Services for which no charge is normally made in the absence of insurance.
- (6) Expenses for services or items available or paid under another long term care insurance or health insurance policy.**
- (7) In the case of a federally tax-qualified long term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be reimbursable but for the application of a deductible or coinsurance amount.**

This section is not intended to prohibit exclusions and limitations by type of provider or territorial limitations. (*Department of Insurance; 760 IAC 2-3-2; filed Oct 30, 1992, 12:00 p.m.: 16 IR 858; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 14. 760 IAC 2-3-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-3-4 Group long term care policies

Authority: IC 27-8-12-7
Affected: IC 27-8-12

Sec. 4. (a) Group long term care insurance policies, certificates, or subscriber agreements issued in Indiana on or after the effective date of this article shall provide covered individuals

with a basis for continuation or conversion of coverage.

(b) As used in this article, "a "basis for continuation of coverage" means a policy provision ~~which that~~ maintains coverage under the existing group policy when such coverage would otherwise terminate and ~~which that~~ is subject only to the continued timely payment of premium. Group policies ~~which that~~ contain incentives to use certain providers ~~and/or or~~ facilities, **or both**, and group policies ~~which that~~ provide a restricted list of providers ~~and/or or~~ facilities, **or both**, shall provide continuation of benefits ~~which that~~ are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits. The commissioner shall consider the differences between managed care and nonmanaged care plans, including, but not limited to, the following:

- (1) Provider system arrangements.
- (2) Service availability.
- (3) Benefit levels.
- (4) Administrative complexity.

(c) As used in this article, "a "basis for conversion of coverage" means a policy provision ~~which that~~ requires that an individual:

- (1) whose coverage under the group policy would otherwise terminate or has been terminated for any reason, **including discontinuance of the group policy in its entirety or with respect to an insured class;** and
- (2) who has been continuously insured under the group policy (and any group policy ~~which that~~ it replaced) for at least six (6) months immediately prior to termination;

shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(d) As used in this article, "converted policy" means an individual policy of long term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers ~~and/or or~~ facilities, **or both**, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, the following:

- (1) Provider system arrangements.
- (2) Service availability.
- (3) Benefit levels.
- (4) Administrative complexity.

(e) In order to maintain uninterrupted coverage, written application for the converted policy must be made and the first premium due, if any, must be paid as directed by the insurer not

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later than thirty-one (31) days after:

(1) termination of coverage under the group policy; or ~~thirty-one (31) days after~~

(2) the date notification of conversion rights is mailed to the certificate holder;

whichever is later. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

(f) If the group policy from which conversion is made:

(1) did not replace previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made; or

(2) replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(1) termination of the individual's group coverage resulted from the individual's failure to make any required payment of premium or contribution when due; or

(2) the terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

(A) providing benefits identical to those provided by the terminating coverage or providing benefits ~~which that~~ the commissioner determines to be substantially equivalent to or in excess of the benefits provided by the terminating coverage;

(B) the premium is calculated in a manner consistent with the requirements of subsection (f); and

(C) the new policy provides coverage to all individuals previously covered under the replaced policy.

(h) Notwithstanding any other provision of this rule, a converted policy issued to an individual may provide for a reduction of benefits payable to an individual only if:

(1) at the time of conversion, the individual is covered by another long term care insurance policy ~~which that~~ provides benefits on the basis of incurred expenses;

(2) the benefits provided by the other long term care policy together with the full benefits provided by the converted policy would result in payment of more than one hundred percent (100%) of the incurred expenses; and

(3) the reduction in benefits may only be included in the converted policy if the converted policy also provides for a premium decrease or refund ~~which that~~ reflects the reduction in benefits payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall

not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any other provision of this rule, any insured individual whose eligibility for group long term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship. (*Department of Insurance; 760 IAC 2-3-4; filed Oct 30, 1992, 12:00 p.m.: 16 IR 858; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 15. 760 IAC 2-3-6 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-3-6 Premiums

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 6. The premiums charged to an insured for long term care insurance shall not increase due to either:

(1) the increasing age of the insured at ~~ages beyond~~ sixty-five (65) **years of age or beyond**; or

(2) the duration the insured has been covered under the policy.

~~This limitation shall not be required of life insurance policies or riders containing accelerated long term care benefits.~~ (*Department of Insurance; 760 IAC 2-3-6; filed Dec 31, 1992, 9:00 a.m.: 16 IR 1391; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 16. 760 IAC 2-3-7 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-3-7 Electronic enrollment

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 7. (a) In the case of a group long term care policy, any requirement that a signature of an insured be obtained by an insurance producer or insurer shall be deemed satisfied if the following conditions are met:

(1) The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee.

(2) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure:

(A) the accuracy, retention, and prompt retrieval of records; and

(B) that the confidentiality of individually identifiable information is maintained.

(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

(Department of Insurance; 760 IAC 2-3-7)

SECTION 17. 760 IAC 2-3-8 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-3-8 Unintentional lapse

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec 8. Each insurer offering long term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1) No individual long term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one (1) person who is to receive the notice of termination in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The insurer shall notify the insured of the right to change this written designation no less often than once every two (2) years.

(2) The form used for the written designation must provide space clearly designated for listing at least one (1) person. The designation shall include each person's full name and home address.

(3) In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice".

(4) When the policyholder or certificate holder pays premium for a long term care insurance policy or certificate through a payroll or pension deduction plan, the requirements of this section need not be met until sixty (60) days after the policyholder or certificate holder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

(5) No individual long term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated to receive notice under this section at the address provided by the insured for purposes of receiving notice of lapse or

termination. Notice shall be given by first class United States mail, postage prepaid, and notice may not be given until thirty (30) days after a premium is due and unpaid. Notice shall be deemed to have been given as of five (5) days after the date of mailing.

(6) A long term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premiums, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy or certificate.

(Department of Insurance; 760 IAC 2-3-8)

SECTION 18. 760 IAC 2-4-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-4-1 Renewability provisions

Authority: IC 27-8-12-7

Affected: IC 27-8-12-10.6

Sec. 1. (a) Individual long term care insurance policies shall contain a renewability provision. The provision shall:

- (1) be appropriately captioned; ~~shall~~
- (2) appear on the first page of the policy; and ~~shall~~
- (3) clearly state the duration ~~where limited~~; of:
 - (A) renewability, ~~and the duration of where limited~~;
 - (B) the term of coverage for which the policy is issued; and ~~the duration of~~
 - (C) the term of coverage for which the policy may be renewed.

This section shall not apply to policies ~~which that~~ do not contain a renewability provision, and under which the policies' right to nonrenew is reserved solely to the policyholder. **A long term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that the premium rate may change.**

(b) All riders or endorsements added to an individual long term care insurance policy after ~~the~~ date of issue or at reinstatement or renewal ~~which that~~ reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured, except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long term care insurance policy. After the date of policy issue, any rider or endorsement ~~which that~~ increases benefits or coverage ~~which that~~ also increases the

premium during the policy term must be accepted ~~to~~ in writing signed by the insured ~~except if~~ **unless** the increased benefits or coverage are required by law. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(c) A long term care insurance policy or certificate ~~which~~ **that** provides for the payment of benefits based on standards described as “usual and customary”, “reasonable and customary”, or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) If a long term care insurance policy, certificate, or subscriber agreement contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy, certificate, or subscriber agreement and shall be labeled as “Preexisting Condition Limitations”.

(e) A long term care insurance policy, certificate, or subscriber agreement containing any limitations or conditions for eligibility other than those prohibited in IC 27-8-12-10.6 shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy, certificate, or subscriber agreement and shall label such paragraph “Limitations or Conditions on Eligibility for Benefits”.

(f) Life insurance policies ~~which~~ **that** provide an accelerated benefit for long term care are required to include a disclosure statement **at the time**:

- (1) ~~at the time~~ of application for the policy or rider; and
- (2) ~~at the time~~ the accelerated benefit payment request is submitted;

that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

(g) **Activities of daily living and cognitive impairment shall be:**

- (1) **used to measure an insured’s need for long term care;**
- (2) **described in the policy or certificate in a separate paragraph; and**
- (3) **labeled “Eligibility for the Payment of Benefits”.**

Any additional benefit triggers shall also be explained in this paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this, too, shall be specified.

(h) **A federally tax-qualified long term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in 760 IAC 2-17-**

1(e)(3) that the policy is intended to be a federally tax-qualified long term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(i) A nonfederally tax-qualified long term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in 760 IAC 2-17-1(e)(3) that the policy is not intended to be a federally tax-qualified long term care insurance contract. (*Department of Insurance; 760 IAC 2-4-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 860; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 19. 760 IAC 2-4-2 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-4-2 Required disclosure of rating practices to consumers

Authority: IC 27-8-12-7
Affected: IC 27-8-12-10.6

Sec. 2. (a) Except as provided in subsection (b), this section applies to any long term care policy or certificate issued in this state on or after January 1, 2005.

(b) For certificates issued on or after January 2, 2005, under a group long term care insurance policy that was in force on July 1, 2005, this section shall apply on the policy anniversary following July 1, 2006.

(c) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide the following information to the applicant at the time of application or enrollment unless the method of application does not allow for delivery at that time, in which case, an insurer shall provide the following information to the applicant no later than the time of delivery of the policy or certificate:

- (1) A statement that the policy may be subject to rate increases in the future.**
- (2) An explanation of potential future premium rate revisions and the policyholder’s or certificate holder’s option in the event of a premium rate revision.**
- (3) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase.**
- (4) A general explanation for applying premium rate or rate schedule adjustments that shall include the following:**
 - (A) A description of when premium rate or rate schedule adjustments will be effective.**
 - (B) The right to a revised premium rate or rate schedule if the premium rate or rate schedule is changed.**
- (5) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten (10) years for this state or any other state that, at a**

minimum, identifies the policy forms for which premium rates have been increased, the calendar years when the form was available for purchase, and the amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as a minimum and maximum percentage if the rate increase is variable by rating characteristics and as follows:

(A) The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

(B) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(C) If an acquiring insurer files for a rate increase on a long term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of this section or the end of a twenty-four (24) month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with this section.

(D) If the acquiring insurer files for a subsequent rate increase, even within the twenty-four (24) month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by this section including disclosure of the earlier rate increases.

(d) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under subsection (c). If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(e) An insurer shall use the forms in 760 IAC 1-19.5-1 and 760 IAC 1-19.5-2 to comply with the requirements of this section.

(f) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by subsection (c) when the rate increase is

implemented. (*Department of Insurance; 760 IAC 2-4-2*)

SECTION 20. 760 IAC 2-7-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-7-1 General provisions

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 1. (a) **No insurer may offer a long term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of long term care services covered by the policy.** Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature. ~~An inflation protection feature shall provide at least~~ **no less favorable than** one (1) of the following:

(1) Increase benefit levels annually to be compounded annually at a rate not less than five percent (5%).

(2) Guarantee the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be more than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent (5%) for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made.

(3) Cover a specified percentage of actual or reasonable charges and ~~do~~ **does** not include a maximum specified indemnity amount or limit.

(b) Inflation protection benefit increases under a policy ~~which~~ **that** contains such benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(c) An offer of inflation protection ~~which that~~ provides for automatic benefit increases shall include an offer of a premium ~~which that~~ the insurer expects to remain constant. Such offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(d) Inflation protection as provided in subsection (a) shall be included in a long term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder. The rejection shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection and I reject inflation protection.

(Signature of Applicant(s))."

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(Department of Insurance; 760 IAC 2-7-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 21. 760 IAC 2-8-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-8-1 Questions

Authority: IC 27-8-12-7

Affected: IC 27-8-5-16; IC 27-8-12

Sec. 1. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long term care insurance policy, certificate, or subscriber agreement in force or whether a long term care policy, certificate, or subscriber agreement is intended to replace any other accident and sickness or long term care policy, certificate, or subscriber agreement presently in force:

- (1) Do you have another long term care insurance policy or certificate in force (including health care service contract or health maintenance organization contract)?
- (2) Did you have another long term care insurance policy or certificate in force during the last twelve (12) months? If so:
 - (A) with which company; and
 - (B) if that policy lapsed, when did it lapse?
- (3) Are you covered by Medicaid?
- (4) Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?

A supplementary application or other form to be signed by the applicant and ~~agent~~, **insurance producer**, except where the coverage is sold without an ~~agent~~, **insurance producer**, containing such questions may be used. With regard to a replacement policy issued to a group defined by IC 27-8-5-16(1), the questions in this section may be modified only to the extent necessary to elicit information about health or long term care insurance policies other than the group policy being replaced; provided, however, that the certificate holder has been notified of the replacement. (Department of Insurance; 760 IAC 2-8-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 22. 760 IAC 2-8-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-8-2 Any other health insurance policies

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 2. (a) ~~Agents~~ **Insurance producers** shall list the following:

- (1) Any other health insurance policies they have sold to the applicant.
- ~~(b) Agents shall list~~ (2) Policies sold which are still in force.
- ~~(c) Agents shall list~~ (3) Policies sold in the past five (5) years ~~which that~~ are no longer in force.

(Department of Insurance; 760 IAC 2-8-2; filed Oct 30, 1992, 12:00 p.m.: 16 IR 863; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 23. 760 IAC 2-8-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-8-3 Notice regarding replacement of accident and sickness or long term care insurance

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 3. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its ~~agent~~, **insurance producer**, shall furnish the applicant, prior to issuance or delivery of the long term care insurance policy, a notice regarding replacement of accident and sickness or long term care coverage. One (1) copy of such notice shall be retained by the applicant, and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF ACCIDENT AND SICKNESS
OR LONG TERM CARE INSURANCE
[Insurance company's name and address]
SAVE THIS NOTICE! IT MAY BE IMPORTANT
TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long term care insurance and replace it with a long term care insurance policy to be issued by [company name]. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors ~~which that~~ may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long term care coverage is a wise decision.

STATEMENT TO APPLICANT BY ~~AGENT~~ **INSURANCE PRODUCER** [BROKER OR OTHER REPRESENTATIVE]:
(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions, which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present coverage.
2. State law provides that your replacement policy or certifi-

cate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long term care insurance coverage, you may wish to secure the advice of your present insurer or its **agent insurance producer** regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of **Agent, Insurance producer**, Broker, or Other Representative)

[Typed Name and Address of **Agent Insurance producer** or Broker]

The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's Signature)

(Department of Insurance; 760 IAC 2-8-3; filed Oct 30, 1992, 12:00 p.m.: 16 IR 863; errata filed Jan 19, 1993, 10:00 a.m.: 16 IR 1514; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 24. 760 IAC 2-8-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-8-4 Direct response solicitations

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 4. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long term care coverage to the applicant upon issuance of the policy, certificate, or subscriber agreement. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF ACCIDENT AND SICKNESS
OR LONG TERM CARE INSURANCE
[Insurance company's name and address]
SAVE THIS NOTICE! IT MAY BE IMPORTANT
TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long term care insurance and replace it with the long term care insurance [policy] [certificate] [subscriber agreement] delivered herewith issued by [company name]. Your new [policy] [certificate] [subscriber agreement] provides thirty (30) days within which you may decide, without cost, whether you desire to keep the [policy] [certificate] [subscriber agreement]. For your own information and protection, you should be aware of and seriously consider certain factors ~~which that~~ may affect the insurance protection available to you under the new [policy] [certificate] [subscriber agreement].

You should review this new coverage carefully, comparing it with all accident and sickness or long term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long term care coverage is a wise decision.

1. Health conditions, which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long term care insurance coverage, you may wish to secure the advice of your present insurer or its **agent insurance producer** regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

(Department of Insurance; 760 IAC 2-8-4; filed Oct 30, 1992, 12:00 p.m.: 16 IR 864; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 25. 760 IAC 2-8-6 IS ADDED TO READ AS

FOLLOWS:

760 IAC 2-8-6 Life insurance policies

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 6. Life insurance policies that accelerate benefits for long term care shall comply with this rule if the policy being replaced is a long term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of 760 IAC 1-16.1. If a life insurance policy that accelerates benefits for long term care is replaced by another such policy, the replacing insurer shall comply with both the long term care and the life insurance replacement requirements. (*Department of Insurance; 760 IAC 2-8-6*)

SECTION 26. 760 IAC 2-9-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-9-1 Reporting

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 1. (a) Every insurer shall maintain records for each ~~agent~~ **insurance producer** of that ~~agent's insurance producer's~~ amount of replacement sales as a percent of the ~~agent's insurance producer's~~ total annual sales and the amount of lapses of long term care insurance policies sold by the ~~agent insurance producer~~ **producer** as a percent of the ~~agent's insurance producer's~~ total annual sales.

(b) Each insurer shall report annually by June 30 the ten percent (10%) of its ~~agents insurance producers~~ **insurance producers** with the greatest percentages of lapses and replacements as measured by subsection (a).

(c) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely ~~agent insurance producer~~ **insurance producer** activities regarding the sale of long term care insurance.

(d) Every insurer shall report annually by June 30 the number of the following:

(1) Lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

~~(e) Every insurer shall report annually by June 30 the number of~~ (2) Replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(3) Claims denied for each class of business as a percentage of claims.

~~(f)~~ (e) For purposes of this rule:

(1) "claim" means a request for payment of benefits

under a policy in force regardless of whether the benefit claimed is covered under the policy and any terms or conditions of the policy have been met;

(2) "denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition;

(3) "policy" means only long term care insurance; and

(4) "report" means on a statewide basis.

(f) Reports required under this section shall be filed with the commissioner. (*Department of Insurance; 760 IAC 2-9-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 865; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 27. 760 IAC 2-10-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-10-1 Licensing

Authority: IC 27-8-12-7

Affected: IC 27-1-15.5-3; IC 27-1-15.7-2

Sec. 1. (a) No ~~agent~~ **insurance producer** is authorized to market, sell, solicit, ~~insurer shall allow any long term care product to be marketed, sold, or solicited,~~ or otherwise ~~allow the~~ **allow** the contact of any person for the purpose of marketing long term care insurance ~~until unless the insurance producer doing so has met all of the following criteria:~~

(1) The ~~agent insurance producer~~ **insurance producer** has successfully passed eight (8) hours of approved continuing education courses in long term care and long term care insurance. An ~~agent insurance producer~~ **insurance producer** who completes the eight (8) hours of continuing education required by this subsection during the first two (2) years of a four (4) year license shall also comply with subsection (b) during the second two (2) years of the license.

(2) The ~~insurance producer~~ **insurance producer** has successfully completed five (5) hours of approved continuing education in long term care or long term care insurance every two (2) years for a total of ten (10) hours in every four (4) year license renewal period.

(3) Has completed and passed the continuing education courses set out in this rule prior to accepting applications from the insurance producer or paying the insurance producer commission for the sale of long term care coverage.

~~(b) An agent shall successfully complete five (5) hours of approved continuing education in long term care or long term care insurance every two (2) years for a total of ten (10) hours in every four (4) year license renewal period.~~

~~(c) (b) Continuing education courses completed pursuant to subsections (a) and (b) under this section may be used to satisfy the continuing education requirements set forth in IC 27-1-15.5-7.1. IC 27-1-15.7-2.~~

(d) Each insurer shall require an agent to provide documentation certifying that the agent has satisfied the requirements of this rule prior to accepting applications from the agent or paying the agent commission for the sale of long term care coverage. (*Department of Insurance; 760 IAC 2-10-1; filed Oct. 30, 1992, 12:00 p.m.: 16 IR 865; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Oct 2, 2001, 4:50 p.m.: 25 IR 382*)

SECTION 28. 760 IAC 2-13-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-13-1 Relevant factors

Authority: IC 27-8-12-7

Affected: IC 27-1-12-7; IC 27-8-12-14.5; IC 27-8-12-14.6

Sec. 1. (a) Benefits under individual long term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent (60%), calculated in a manner ~~which~~ **that** provides for adequate reserving of the long term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including the following:

- (1) Statistical credibility of incurred claims experience and earned premiums.
- (2) The period for which rates are computed to provide coverage.
- (3) Experienced and projected trends.
- (4) Concentration of experience within early policy duration.
- (5) Expected claim fluctuation.
- (6) Experience refunds, adjustments, or dividends.
- (7) Renewability features.
- (8) All appropriate expense factors.
- (9) Interest.
- (10) Experimental nature of the coverage.
- (11) Policy reserves.
- (12) Mix of business by risk classification.
- (13) Product features, such as long elimination periods, high deductibles, and high maximum limits.

(b) **This section does not apply to life insurance policies that accelerate benefits for long term care. A life insurance policy that funds long term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premium paid, if the policy complies with all of the following provisions:**

- (1) **The interest credited internally to determine cash value accumulations, including long term care, if any, is guaranteed to be no less than the minimum guaranteed interest rate for cash value accumulations without long term care set forth in the policy.**
- (2) **The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of IC 27-1-12-7.**
- (3) **The policy meets the disclosure requirements of IC 27-8-12-14.5 and IC 27-8-12-14.6.**
- (4) **Any policy illustrations meet the applicable require-**

ments of 760 IAC 1-62.

(5) **An actuarial memorandum is filed with the commissioner that includes the following:**

- (A) **A description of the basis on which the long term care rates were determined.**
- (B) **A description of the basis for the reserves.**
- (C) **A summary of the following:**
 - (i) **Type of policy.**
 - (ii) **Benefits.**
 - (iii) **Renewability.**
 - (iv) **General marketing method.**
 - (v) **Limits on ages of issuance.**
- (D) **A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any.**
- (E) **A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives.**
- (F) **The estimated average annual premium per policy and the average issue age.**
- (G) **A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used, and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs.**
- (H) **A description of the effect of the long term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long term care claim status.**

(*Department of Insurance; 760 IAC 2-13-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 866; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 29. 760 IAC 2-15-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-15-1 Standards

Authority: IC 27-8-12-7

Affected: IC 27-4-1-4; IC 27-8-12

Sec. 1. (a) Every insurer, health care service plan, or other entity marketing long term care insurance coverage in this state, directly or through its producers, shall do the following:

- (1) Establish marketing procedures to assure that any comparison of policies by its ~~agents or other insurance~~ producers will be fair and accurate.
- (2) Establish marketing procedures to assure excessive insurance is not sold or issued.
- (3) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy,

certificate, or subscriber agreement the following: "Notice to buyer: This [policy] [certificate] [subscriber agreement] may not cover all of the costs associated with long term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all [policy] [certificate] [subscriber agreement] limitations."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long term care insurance already has accident and sickness or long term care insurance and the types and amounts of any such insurance.

(5) Every insurer or entity marketing long term care insurance shall establish auditable procedures for verifying compliance with this subsection.

(6) Every insurer shall, at solicitation, provide written notice to the prospective policyholder or certificate holder about the existence and availability of the following programs:

(A) The Senior Health Insurance Information Program administered by the department along with the name, address, and telephone number of the program.

(B) The Indiana Long Term Care Insurance Program along with the name, address, and telephone number of the program.

(7) For long term care health insurance policies and certificates, use the terms "noncancellable" or "guaranteed renewable" only when the policy or certificate conforms to 760 IAC 2-3-1.

(8) Provide an explanation of contingent benefit upon lapse provided for in 760 IAC 2-16.1-2(d).

(9) Provide copies of the disclosure forms required by 760 IAC 2-4-2(e).

(b) In addition to the practices prohibited in IC 27-4-1-4, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies, coverage, or insurers for the purpose of inducing, or tending to induce, any person to:

- (A) lapse;
- (B) forfeit;
- (C) surrender;
- (D) terminate;
- (E) retain;
- (F) pledge;
- (G) assign;
- (H) borrow on; or
- (I) convert;

any insurance policy or coverage or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through:

- (A) force;
- (B) fright;

(C) threat, whether explicit or implied; or

(D) undue pressure;

to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing **which that** fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance **agent producer** or insurance company.

(4) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long term care insurance policy.

(c) With respect to the obligations set forth in this subsection, the primary responsibility of an association, when endorsing or selling long term care insurance, shall be to educate its members concerning long term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(d) The insurer shall file with the department the following material:

- (1) The policy and certificate.**
- (2) A corresponding outline of coverage.**
- (3) Premium rates**
- (4) All advertisements requested by the department.**

(e) The association shall disclose the following in any long term care insurance solicitation:

- (1) The specific nature and amount of the compensation arrangements, including all fees, commissions, administrative fees, and other forms of financial support that the association receives from endorsement or sale of the policy or certificate to its members.**
- (2) A brief description of the process under which the policies and the insurer issuing the policies were selected.**

(f) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members. The board of directors of associations selling or endorsing long term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer. The association shall also do the following:

- (1) At the time of the association's decision to endorse, engage the services of a person with expertise in long term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change.**

(2) Actively monitor the marketing efforts of the insurer and its insurance producers.

(3) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

Subdivisions (1) through (3) shall not apply to federally tax-qualified long term care insurance contracts.

(g) No group long term care insurance policy or certificate may be issued to an association unless the insurer files with the department the information required in this section.

(h) The insurer shall not issue a long term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this section.

(i) Failure to comply with the filing and certification requirements of this section constitutes an unfair trade practice in violation of IC 27-4-1-4. (*Department of Insurance; 760 IAC 2-15-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 867; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 30. 760 IAC 2-15.5 IS ADDED TO READ AS FOLLOWS:

Rule 15.5. Suitability

760 IAC 2-15.5-1 Suitability

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 1. (a) This section shall not apply to life insurance policies that accelerate benefits for long term care.

(b) Every insurer, health care service plan, or other entity marketing long term care insurance (the “issuer”) shall do the following:

(1) Develop and use suitability standards to determine whether the purchase or replacement of long term care insurance is appropriate for the needs of the applicant.

(2) Train its insurance producers in the use of its suitability standards.

(3) Maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(c) To determine whether the applicant meets the standards developed by the issuer, the insurance producer and issuer shall develop procedures that take the following into consideration:

(1) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage.

(2) The applicant’s goals or needs with respect to long term care and the advantages and disadvantages of insurance to meet these goals or needs.

(3) The values, benefits, and costs of the applicant’s existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

(d) The issuer and, where an insurance producer is involved, the insurance producer shall make reasonable efforts to obtain the information set out in subsection (c). The efforts shall include presentation to the applicant, at or prior to application, of the “Long Term Care Insurance Personal Worksheet”. The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in 760 IAC 2-19.5, in not less than 12-point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer’s personal worksheet shall be filed with the commissioner.

(e) A completed personal worksheet shall be returned to the issuer prior to the issuer’s consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long term care insurance to employees and their spouses.

(f) The sale or dissemination outside the company or agency by the issuer or insurance producer of information obtained through the personal worksheet is prohibited.

(g) The issuer shall use the suitability standards it has developed under this section in determining whether issuing long term care insurance coverage to an applicant is appropriate.

(h) Producers shall use the suitability standards developed by the issuer in marketing long term care insurance.

(i) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled “Things You Should Know Before You Buy Long Term Care Insurance” shall be provided. The form shall be in the format contained in 760 IAC 2-19.5-3 in not less than 12-point type.

(j) If the issuer determines that the applicant does not meet its financial suitability standards or if the applicant has declined to provide the information, the issuer may reject the application. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant’s intent. Either the applicant’s returned letter or a record of the alternative method of verification shall be made part of the applicant’s file.

(k) The issuer shall report annually to the commissioner

the total number of the following:

- (1) Applications received from residents of this state.
- (2) Those who declined to provide information on the personal worksheet.
- (3) Applicants who did not meet the suitability standards.
- (4) Those who chose to confirm after receiving a suitability letter.

(Department of Insurance; 760 IAC 2-15.5-1)

SECTION 31. 760 IAC 2-16-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-16-1 Appropriateness of recommended purchase

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 1. In recommending the purchase or replacement of any long term care insurance policy, certificate, or subscriber agreement, an **agent insurance producer** shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement. *(Department of Insurance; 760 IAC 2-16-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 867; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 32. 760 IAC 2-16.1 IS ADDED TO READ AS FOLLOWS:

Rule 16.1. Nonforfeiture Benefit Requirement

760 IAC 2-16.1-1 Nonforfeiture

Authority: IC 27-8-12-7; IC 27-8-12-14

Affected: IC 27-8-12

Sec. 1. (a) This section does not apply to life insurance policies or riders containing accelerated long term care benefits.

(b) A long term care insurance policy may not be delivered or issued for delivery in Indiana unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit. A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection (e). The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(c) If the offer is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

(d) After rejection of the offer, for individual and group policies without nonforfeiture benefits issued after the

effective date of this section, the insurer shall provide a contingent benefit upon lapse. In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse. The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the following table based on the insured's issue age, and the policy or certificate lapses within one hundred twenty (120) days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%

85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

On or before the effective date of a substantial premium increase, the insurer shall do the following:

- (1) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased.
- (2) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (e). This option may be elected at any time during the one hundred twenty (120) day period referenced in subdivision (3).
- (3) Notify the policyholder or certificate holder that a default or lapse at any time during the one hundred twenty (120) day period referenced in this subdivision shall be deemed to be the election of the offer to convert in subsection (b).

(e) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are as follows:

- (1) For purposes of this subsection, "attained age rating" means a schedule of premiums starting from the issue date that increases at least one percent (1%) per year prior to fifty (50) years of age, and at least three percent (3%) per year beyond fifty (50) years of age.
- (2) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subdivision (3).
- (3) The standard nonforfeiture credit will be equal to one hundred percent (100%) of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall be not less than thirty (30) times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection (f).
- (4) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three (3) years as well as thereafter. For a policy or certificate with attained age rating,

the nonforfeiture benefit shall begin on the earlier of the end of:

- (A) the tenth year following the policy or certificate issue date; or
 - (B) the second year following the date the policy or certificate is no longer subject to attained age rating.
- (5) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(f) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid-up status will not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium paying status.

(g) There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

(h) The requirements set forth in this section shall become effective twelve (12) months after adoption of this rule and shall apply as follows:

- (1) Except as provided in subdivision (2), this section applies to any long term care policy issued in this state on or after the effective date of this section.
- (2) For certificates issued on or after the effective date of this section, under a group long term care insurance policy, which policy was in force at the time this section became effective, this section shall not apply.

(i) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of 760 IAC 2-13 treating the policy as a whole.

(j) To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (d), a replacing insurer that purchased or otherwise assumed a block or blocks of long term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(k) A nonforfeiture benefit for federally tax-qualified long term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

- (1) The nonforfeiture provision shall be appropriately captioned.
- (2) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted

only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form.

(3) The nonforfeiture provision shall provide at least one (1) of the following:

- (A) Reduced paid-up insurance.
- (B) Extended term insurance.
- (C) Shortened benefit period.
- (D) Other similar offerings approved by the commissioner.

(Department of Insurance; 760 IAC 2-16.1-1)

760 IAC 2-16.1-2 Standards for benefit triggers

Authority: IC 27-8-12-7; IC 27-8-12-14

Affected: IC 27-8-12

Sec. 2. (a) A long term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.

(b) Insurers may use additional activities of daily living to trigger covered benefits as long as they are defined in the policy.

(c) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however, the provisions shall not restrict, and are not in lieu of, the requirements contained in subsections (a) and (b).

(d) For purposes of this section, the determination of a deficiency shall not be more restrictive than the following:

- (1) The hands-on assistance of another person to perform the prescribed activities of daily living.
- (2) If the deficiency is due to the presence of a cognitive impairment, supervision, or verbal cuing by another person in order to protect the insured or others.

(e) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

(f) Long term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(g) This section shall be effective July 1, 2005, and shall apply as follows:

- (1) Except as provided in subdivision (2), this section applies to a long term care policy issued in this state on or

after the effective date of this section.

- (2) For certificates issued on or after the effective date of this section, under a group long term care insurance policy that was in force at the time this section became effective, this rule shall not apply.

(Department of Insurance; 760 IAC 2-16.1-2)

760 IAC 2-16.1-3 Standards for benefit triggers for federally tax-qualified long term care insurance contracts

Authority: IC 27-8-12-7; IC 27-8-12-14

Affected: IC 27-8-12

Sec. 3. (a) For purposes of this section the following definitions apply:

- (1) "Federally tax-qualified long term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as necessary:

- (A) diagnostic;
- (B) preventive;
- (C) therapeutic;
- (D) curative;
- (E) treatment;
- (F) mitigation;
- (G) rehabilitative; and
- (H) maintenance or personal care;

services that are required by a chronically ill individual and are provided under a plan of care prescribed by a licensed health care practitioner.

- (2) "Chronically ill individual" has the meaning set forth in Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, the term means any individual who has been certified by a licensed health care practitioner as:

- (A) being unable to perform (without substantial assistance from another individual) at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or
- (B) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

The term shall not include an individual otherwise meeting these requirements unless within the preceding twelve (12) month period a licensed health care practitioner has certified that the individual meets these requirements.

- (3) "Licensed health care practitioner" means one (1) of the following:

- (A) A physician, as defined in Section 1861(r)(1) of the Social Security Act.
- (B) A registered professional nurse.
- (C) A licensed social worker.
- (D) An individual who meets requirements prescribed by the Secretary of the Treasury.

(4) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(b) A federally tax-qualified long term care insurance contract shall pay only for federally tax-qualified long term care services received by a chronically ill individual provided under a plan of care prescribed by a licensed health care practitioner.

(c) A federally tax-qualified long term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity or to severe cognitive impairment.

(d) Certifications regarding activities of daily living and cognitive impairment required under subsection (c) shall be performed by the following licensed or certified professionals:

- (1) Physicians.
- (2) Registered professional nurses.
- (3) Licensed social workers.
- (4) Other individuals who meet requirements prescribed by the Secretary of the Treasury.

(e) Certifications required under subsection (c) may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded, and additional certifications may not be performed until after the expiration of the ninety (90) day period.

(f) Federally tax-qualified long term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations. (*Department of Insurance; 760 IAC 2-16.1-3*)

SECTION 33. 760 IAC 2-17-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-17-1 Standard

Authority: IC 27-8-12-7; IC 27-8-12-14
Affected: IC 27-8-12

Sec. 1. (a) The outline of coverage shall be a free-standing

document, using no smaller than ~~ten (10)~~ point **12-point** type.

(b) The outline of coverage shall contain no material of an advertising nature.

(c) Text ~~which that~~ is capitalized or underscored in the standard format outline of coverage may be emphasized by other means ~~which that~~ provide prominence equivalent to such capitalization or underscoring.

(d) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(e) The format for the outline of coverage shall be as follows:

[COMPANY NAME]
[ADDRESS – CITY AND STATE]
[TELEPHONE NUMBER]
LONG TERM CARE INSURANCE
OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies, certificates, or subscriber agreements ~~which that~~ are guaranteed issue, the following caution statement, or language substantially similar, must appear in the outline of coverage.]

Caution: The issuance of this long term care insurance [policy] [certificate] [subscriber agreement] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] ~~which that~~ was issued in the [indicate jurisdiction in which group policy was issued]).

2. **PURPOSE OF OUTLINE OF COVERAGE.** This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you **READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!**

3. **FEDERAL TAX CONSEQUENCES.** This [policy] [certificate] is intended to be a federally tax-qualified long term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended.

OR

Federal Tax Implications of this [policy] [certificate]. This [policy] [certificate] is not intended to be a federally tax-qualified long term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [policy] [certificate] may be taxable as income.

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) [For long term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement:] **RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE.** This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company name] cannot change any of the terms of your policy on its own, except that, in the future, **IT MAY INCREASE THE PREMIUM YOU PAY.**

(2) [Policies and certificates that are noncancellable shall contain the following statement;] **RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE.** This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.]

(c) [Describe waiver of premium provisions or state that there are no such provisions.]

5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In boldface type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium and, if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return – “free look” provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial

refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer’s Guide available from the insurance company.

(a) [For ~~agents~~ **insurance producers**] Neither [insert company name] nor its ~~agents~~ **insurance producers** represent Medicare, the federal government, or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government, or any state government.

8. LONG TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

9. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductible(s), waiting periods, elimination periods, and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Noninstitutional benefits, by skill level.]

(d) **Eligibility for payment of benefits. [Activities of daily living and cognitive impairment shall be used to measure an insured’s need for long term care and must be defined and described as part of the outline of coverage.]**

[Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured’s need for long term care, then these qualifying criteria or screens must be explained.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

(a) Preexisting conditions.

(b) Noneligible facilities/provider.

(c) Noneligible levels of care, e.g., unlicensed providers, care or treatment provided by a family member, etc.

(d) Exclusions/exceptions.

(e) Limitations.]

[This section should provide a brief specific description of any policy provisions ~~which~~ **that** limit, exclude, restrict, reduce, delay, or, in any other manner, operate to qualify

payment of the benefits described in ~~(6)~~ (9) above.]
THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG TERM CARE NEEDS.

~~8-~~ **11. RELATIONSHIP OF COST OF CARE AND BENEFITS.** Because the costs of long term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time.
- (b) Any automatic benefit adjustment provisions.
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage.
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations.
- (e) And finally, describe whether there will be any additional premium charge imposed and how that is to be calculated.]

~~9-~~ **12. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.**

- [(a) Describe the policy renewability provisions.
- (b) For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.
- (c) Describe waiver of premium provisions or state that there are ~~not~~ no such provisions.
- (d) State whether or not the company has a right to change premium and, if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

~~10-~~ **13. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.**

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision ~~which~~ **that** provides preconditions to the availability of policy benefits for such an insured.]

~~11-~~ **14. PREMIUM.**

- [(a) State the total annual premium for the policy.
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium ~~which~~ **that** corresponds to each benefit option.]

~~12-~~ **15. ADDITIONAL FEATURES.**

- [(a) Indicate if medical underwriting is used.
- (b) Describe other important features.]

16. CONTACT THE STATE SENIOR HEALTH INSURANCE INFORMATION PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS

REGARDING YOUR LONG TERM CARE INSURANCE POLICY OR CERTIFICATE.

(Department of Insurance; 760 IAC 2-17-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 868; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 34. 760 IAC 2-18-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-18-1 Delivery

Authority: IC 27-8-12-7
Affected: IC 27-8-12-14.5

Sec. 1. (a) A long term care insurance shopper's guide in a format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long term care insurance policy or certificate. Delivery shall be as follows:

- (1) ~~In the case of agent~~ **For insurance producer** solicitations, an ~~agent~~ **insurance producer** must deliver the shopper's guide prior to the presentation of an application or enrollment form.
- (2) ~~In the case of~~ **For** direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

(b) Life insurance policies or riders containing accelerated long term care benefits are not required to furnish the guide referenced in subsection (a), but shall furnish the policy summary required under IC 27-8-12-14.5. *(Department of Insurance; 760 IAC 2-18-1; filed Oct 30, 1992, 12:00 p.m.: 16 IR 869; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 35. 760 IAC 2-19-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-19-2 Other sanctions

Authority: IC 27-8-12-7
Affected: IC 27-8-12

Sec. 2. In addition to any other sanction provided under the laws or rules of this state, the commissioner may impose a penalty against the insurance ~~agent~~ **producer** who has violated the laws or rules. The penalty shall be the greater of **the following:**

- (1) Three (3) times the amount of the commissions paid for each policy involved in the violation. ~~or~~
- (2) Two thousand five hundred dollars (\$2,500).

(Department of Insurance; 760 IAC 2-19-2; filed Oct 30, 1992, 12:00 p.m.: 16 IR 870; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 36. 760 IAC 2-19.5 IS ADDED TO READ AS FOLLOWS:

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Rule 19.5. Standard Forms

760 IAC 2-19.5-1 Long term care insurance personal worksheet

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 1. The long term care insurance personal worksheet is as follows:

Long Term Care Insurance Personal Worksheet

People buy long term care insurance for many reasons. Some don't want to use their own assets to pay for long term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long term care insurance may be expensive and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

Premium Information

Policy Form Numbers _____

The premium for the coverage you are considering will be [\$_____ per month, or \$_____ per year,] [a one-time single premium of \$_____.]

Type of Policy (noncancellable/guaranteed renewable):

The Company's Right to Increase Premiums:

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History

The company has sold long term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

Questions Related to Your Income

How will you pay each year's premium?

From my Income
From my Savings/Investments
My Family will Pay

[Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 20%?]

What is your annual income? (check one)

Under \$10,000
\$[10-20,000]
\$[20-30,000]
\$[30-50,000]
Over \$50,000

How do you expect your income to change over the next 10 years? (check one)

No change
Increase
Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection? (check one) Yes No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

From my Income
From my Savings/Investments
My Family will Pay

The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.

What elimination period are you considering? Number of days _____ Approximate cost \$_____ for that period of care.

How are you planning to pay for your care during the elimination period? (check one)

From my Income
From my Savings/Investments
My Family will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

Under \$20,000
\$20,000-\$30,000
\$30,000-\$50,000
Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

Stay about the same

Increase

Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long term care.

Disclosure Statement

The answers to the questions above describe my financial situation.

Or

I choose not to complete this information.

(Check one.)

I acknowledge that the carrier and/or its insurance producer (below) has reviewed this form with me including the premium, premium rate increase history, and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history, and potential for premium increases in the future.] I understand the above disclosures. I understand that the rates for this policy may increase in the future. (This box must be checked).

Signed: _____

(Applicant)

(Date)

[I explained to the applicant the importance of completing this information.

Signed: _____

(Insurance Producer)

(Date)

Agent's Printed Name: _____]

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.

Signed: _____]

(Applicant)

(Date)

The company may contact you to verify your answers.

(Department of Insurance; 760 IAC 2-19.5-1)

760 IAC 2-19.5-2 Potential rate increase disclosure form

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 2. The form required by 760 IAC 2-4-2(e) is as follows:

Instructions:

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

Long Term Care Insurance

Potential Rate Increase Disclosure Form

1. [Premium Rate] [Premium Rate Schedules]: [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [approved] for an increase [is][are] [on the application][\$ _____]

2. The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.

3. Rate Schedule Adjustments:

The company will provide a description of when premium rate or rate schedule adjustments will be effective (for example, next anniversary date, next billing date, etc.) (fill in the blank):
_____.

4. Potential Rate Revisions:

This policy is Guaranteed Renewable. This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one (1) of the following options:

§ Pay the increased premium and continue your policy in force as is.

§ Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)

§ Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)

§ Exercise your contingent nonforfeiture rights*. (This option may be available if you do not purchase a separate nonforfeiture option.)

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* Contingent Nonforfeiture

If the premium rate for your policy goes up in the future and you did not buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here is how to tell if you are eligible:

You will keep some long term care insurance coverage, if:

- Your premium after the increase exceeds your origi-

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nal premium by the percentage shown (or more) in the following table; and

- You lapse (not pay more premiums) within one hundred twenty (120) days of the increase.

The amount of coverage (for example, new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you have paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you have paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered “paid-up” with no further premiums due.

Example:

- You bought the policy at age sixty-five (65) and paid the one thousand dollars (\$1,000) annual premium for ten (10) years, so you have paid a total of ten thousand dollars (\$10,000) in premium.
- In the eleventh year, you receive a rate increase of fifty percent (50%), or five hundred (\$500) for a new annual premium of one thousand five hundred (\$1,500), and you decide to lapse the policy (not pay any more premiums).
- Your “paid-up” policy benefits are ten thousand dollars (\$10,000) (provided you have a least ten thousand dollars (\$10,000) of benefits remaining under your policy.)

Turn the Page

Contingent Nonforfeiture

Cumulative Premium Increase over Initial Premium

That qualifies for Contingent Nonforfeiture

(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%

64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(Department of Insurance; 760 IAC 2-19.5-2)

760 IAC 2-19.5-3 Disclosure form

Authority: IC 27-8-12-7

Affected: IC 27-8-12

Sec. 2. The form required by 760 IAC 2-15.5-1(i) is as follows:

Things You Should Know Before You Buy Long Term Care Insurance

- A long term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
- [You should not buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

Drafting Note: For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.

- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare

- Medicare does not pay for most long term care.

Medicaid

- Medicaid will generally pay for long term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.
- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long term care services.
- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.
- Your choice of long term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

Shopper's Guide

- Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long Term Care Insurance". Read it carefully. If you have decided to apply for long term care insurance, you have the right to return the policy within thirty (30) days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling

- Free counseling and additional information about long term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

(Department of Insurance, 760 IAC 2-19.5-3)

SECTION 37. 760 IAC 2-20-10 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-10 "Case management agency" defined

Authority: IC 27-8-12-7.1

Affected: IC 12-15-2; IC 12-15-39.6

Sec. 10. As used in this rule, "case management agency" means an agency or other entity approved by DDARS and OMPP as meeting DDARS case management standards contained in the DDARS community and home care services provider manual. *(Department of Insurance; 760 IAC 2-20-10; filed Nov 20, 1992, 9:00 a.m.: 16 IR 1146; filed Feb 9, 1999, 5:02 p.m.: 22 IR 1989; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 38. 760 IAC 2-20-31.1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-31.1 "Residential care facility" defined

Authority: IC 27-8-12-7.1

Affected: IC 12-10-12; IC 12-15-2; IC 16-28

Sec. 31.1. As used in this rule, "residential care facility", also referred to as assisted living facility and alternate care facility, means a facility licensed under ~~IC 16-28 and 410 IAC 16.2-5~~ **which that:**

- (1) provides twenty-four (24) hour a day care and services sufficient to support needs resulting from an inability to perform activities of daily living or cognitive impairment;
- (2) has a trained and ready to respond employee on duty in the facility at all times to provide care;
- (3) provides three (3) meals a day and accommodates special dietary needs;
- (4) has written contractual arrangements or otherwise ensures that residents receive the medical care services of a physician or nurse in case of emergency; and
- (5) has appropriate methods and procedures for the handling and administration of prescribed medications and treatments.

A requirement that a residential care facility be licensed under IC 16-28 and 410 IAC 16.2-5 is optional for the issuer. *(Department of Insurance; 760 IAC 2-20-31.1; filed Jun 15, 1994, 10:00 a.m.: 17 IR 2646; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 39. 760 IAC 2-20-34 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-34 Standards for marketing

Authority: IC 27-8-12-7.1

Affected: IC 12-15-2; IC 12-15-39.6; IC 27-1-15.5-7.1; IC 27-1-15.5-7.3

Sec. 34. No long term care insurance policy, ~~or~~ certificate, or rider may be advertised, solicited, or issued for delivery in this state as a qualified long term care insurance policy, ~~or~~ certificate, or rider ~~which that~~ does not meet the requirements of this article and has not been approved by the commissioner of the department of insurance as a qualified long term care insurance policy, ~~or~~ certificate, or rider. Each issuer seeking to qualify a long term care policy, ~~or~~ certificate, or rider for participation in the Indiana long term care program must do the following:

- (1) Use applications to be signed by the applicant ~~which that~~ indicate, as described as follows, that he or she:

(A) Received from the issuer the current edition of a booklet developed by OMPP titled "What you should know about long term care: The most commonly asked questions about the Indiana Long Term Care Program".

(B) Received a description of the issuer's qualified long term care policy or certificate benefit option meeting the requirements of sections 36.1(2) and 36.2(2) of this rule.

(C) Agrees to the release of information by the issuer to the state as may be needed to evaluate the Indiana long term care program and document a claim for Medicaid asset protection in the following format:

**"CONSENT AND AUTHORIZATION
TO RELEASE INFORMATION**

I hereby agree to the release of all records and information pertaining to this long term care policy or certificate

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by the [insert issuer name] to the State of Indiana for the purposes of documenting a claim for Asset Protection under the State Medicaid program, evaluating the Indiana Long Term Care Program and meeting Medicaid or Department of Insurance audit requirements.

I understand that the information contained in these records will be used for no purpose other than those stated above and will be kept strictly confidential by the State of Indiana.

(Signature of Applicant(s))

Date”.

(D) Received a graphic comparison showing the differences in premiums and benefits, over at least a twenty (20) year period, between a policy or certificate that increases benefits over the policy or certificate period and a policy or certificate that does not increase benefits.

(E) Agrees that, at the time of application, he or she is a resident of the state of Indiana.

(2) Obtain a signed statement from all applicants for a qualifying long term care facility policy or certificate indicating that they have been offered a qualifying integrated policy or certificate and declined this option. This statement shall be considered part of the application and shall state the following:

“I have been offered a policy or certificate qualifying under the Indiana Long Term Care Program ~~which~~ **that** provides coverage for both nursing home and home and community care services, and I decline the offer to apply for this coverage.

I understand that in the event I later want to purchase qualifying home and community care benefits through a qualifying rider, I may be required to furnish evidence of insurability and the insurer will have the right to refuse my request.

I also understand that the cost of purchasing home and community care benefits at a later date will be more expensive, since the premium for these benefits will be based upon my age at the time of such purchase.

Date

Signature of Applicant”.

(3) Provide to the applicant, **on the application**, the option of having the application date of the policy being issued as the effective date. Where the policy is issued to a group and the group designates a day other than the application date as the effective date, any applicant for a certificate of coverage in an amount that meets or exceeds the state-set dollar amount at the time of application will be issued a certificate with coverage equal to the greater of the following:

(A) The certificate value applied for. ~~or~~

(B) The state-set dollar amount in force on the certificate’s effective date.

In the event the value increases as a result of this provision, the premium may be adjusted accordingly. An election to choose the lesser value in a certificate shall be supported by a statement signed by the applicant that clearly discloses the certificate will earn dollar-for-dollar asset protection.

(4) Provide to the policyholder or certificate holder upon delivery of a qualified long term care insurance policy or certificate a complete description of the asset protection options under the Indiana long term care program and a description of Medicaid in a format prescribed by OMPP.

~~(5) Report to the commissioner of the department of insurance all sales involving replacement of existing policies and certificates by qualified policies or certificates within thirty (30) days of the issue date of the newly issued qualified policy or certificate. The report shall include the following:~~

~~(A) The name and address of the insured;~~

~~(B) The name of the company whose policy or certificate is being replaced;~~

~~(C) The name of the agent replacing the coverage;~~

~~This report shall also include a comparison of the coverage issued with that being replaced; including a comparison of premiums and an explanation of how the replacement was beneficial to the insured. The replacing issuer shall not cancel, nonrenew, or rescind a replacement policy or certificate for any reason other than nonpayment of premium, material misrepresentation, or fraud.~~

(5) Obtain a signed statement from all applicants for a qualified long term care facility policy or certificate that earns dollar-for-dollar asset protection indicating that they are aware the policy or certificate will earn dollar-for-dollar asset protection, and not total asset protection, and that this is their intention.

(6) Provide written evidence to the department of insurance that procedures are in place to assure that no ~~agent insurance producer~~ **agent insurance producer** or telemarketer will be authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing a qualified long term care insurance policy or certificate unless the ~~agent insurance producer~~ **agent insurance producer** or telemarketer has completed fifteen (15) hours of ~~continuing education~~ training on long term care insurance, consisting of eight (8) hours in general long term care and seven (7) hours on the Indiana long term care program specifically.

(7) Include a statement on the outline of coverage, the policy or certificate application, and the front page of the policy or certificate in ~~bold~~ **boldface** type and in a separate box as follows:

THIS POLICY [CERTIFICATE] QUALIFIES UNDER THE INDIANA LONG TERM CARE INSURANCE PROGRAM FOR MEDICAID ASSET PROTECTION. THIS POLICY [CERTIFICATE] MAY PROVIDE BENEFITS IN EXCESS OF THE ASSET PROTECTION PROVIDED IN THE INDIANA LONG TERM CARE PROGRAM.
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(8) For all long term care facility policies or certificates, include a statement on the outline of coverage and the front page of the policy or certificate in **bold boldface** type and prominently displayed ~~which that~~ states: LONG TERM CARE FACILITY POLICY [CERTIFICATE].

(9) Include a statement on the qualified rider in **bold boldface** type and in a separate box as follows:

THIS RIDER QUALIFIES UNDER THE INDIANA LONG TERM CARE PROGRAM FOR MEDICAID ASSET PROTECTION WHEN ATTACHED TO A LONG TERM CARE POLICY ~~WHICH THAT~~ ALSO QUALIFIES FOR MEDICAID ASSET PROTECTION. THIS RIDER MAY PROVIDE BENEFITS IN EXCESS OF THE ASSET PROTECTION PROVIDED IN THE INDIANA LONG TERM CARE PROGRAM.

(10) Long term care insurance policies or certificates sold after April 1, 1993, that are not qualified under the Indiana long term care program must include a statement on the outline of coverage, the policy or certificate application, and the front page of the policy or certificate in **bold boldface** type and in a separate box as follows:

THIS POLICY [CERTIFICATE] DOES NOT QUALIFY FOR MEDICAID ASSET PROTECTION UNDER THE INDIANA LONG TERM CARE PROGRAM. HOWEVER, THIS POLICY [CERTIFICATE] IS AN APPROVED LONG TERM CARE INSURANCE POLICY [CERTIFICATE] UNDER STATE INSURANCE REGULATIONS. FOR INFORMATION ABOUT POLICIES AND CERTIFICATES QUALIFYING UNDER THE INDIANA LONG TERM CARE PROGRAM, CALL THE SENIOR HEALTH INSURANCE INFORMATION PROGRAM OF THE DEPARTMENT OF INSURANCE AT 1-800-452-4800.

(11) Provide that no qualified long term care policy or certificate form shall be sold, transferred, or otherwise ceded to another issuer without first having obtained approval from the commissioner. This provision does not apply to **the following**:

(A) Any reinsurance agreement or transaction in which the ceding issuer continues to remain directly liable for its insurance obligations or risks under the contracts of insurance subject to the reinsurance agreement. ~~and~~

(B) The ceding issuer remains responsible for complying with all requirements of sections ~~37~~ **37.1** through 42 of this rule.

(12) Except as provided in clause (A), an issuer shall continue to make available for purchase any qualified policy form or certificate form issued that has been approved by the commissioner. The following describe the process and result of discontinuing the availability of a qualified policy form or

certificate form:

(A) An issuer may discontinue the availability of a qualified policy form or certificate form if the issuer provides the commissioner, in writing, its decision at least thirty (30) days prior to discontinuing the availability of the form of the qualified policy or certificate. The following shall be considered a discontinuance of the availability of a qualified policy form or certificate form:

(i) The sale or other transfer of a qualified policy form or certificate form to another issuer.

(ii) Failure to actively offer for sale a qualified policy form or certificate form in the previous twelve (12) months.

(iii) A change in the rating structure or methodology unless the issuer complies with the following requirements:

(AA) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates.

(BB) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential ~~which that~~ is in the public interest.

(B) An issuer that discontinues the availability of a qualified policy form or certificate form under clause (A) shall not file for approval of a new long term care policy form or certificate form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate. This clause does not apply if one (1) of the following are met:

(i) An issuer discontinues a qualified policy form or certificate form due to requirements from amendment to this article or IC 27-8-12.

(ii) All existing policyholders and certificate holders of a discontinued qualified policy form or certificate form who are not receiving benefits are notified by the issuer of the availability of the new benefits and provisions of the new qualified policy form by the time of their next renewal date and are offered the opportunity by the issuer to acquire the new benefits ~~and/or~~ or provisions, **or both**, by either:

(AA) adding a qualified rider to the original qualified policy, in which case a separate premium, if any, will be calculated for the qualified rider based on the policyholder's original issue age; or

(BB) replacing the existing qualified policy with the new qualified policy form with the premium calculation for the new qualified policy based on the policy-

holder's original issue age.

This item does not prohibit an issuer ~~for from~~ underwriting in accordance with the issuer's established underwriting standards based on an application for the new qualified policy form or qualified rider.

(iii) The issuer pools the insureds of the existing qualified policy with the issuer's most current largest selling qualified policy for purposes of requesting future rate changes. In the event an issuer does not have another qualified policy in which to pool insureds of their existing qualified policy, the issuer shall pool insureds of the existing qualified policy with their most current largest selling nonqualified policy or with another of their nonqualified policies as determined by the commissioner for purposes of requesting future rate changes.

(C) An issuer who discontinues selling qualified policies or any insurer who assumes a qualified policy from another insurer **shall pool insureds of the existing qualified policies with one of their nonqualified policies as determined by the commissioner for purposes of requesting future rate changes. In addition the insurer must continue to comply with the reporting requirements and maintaining auditing information requirements set forth in this article.**

(13) Provide assurances to the department ~~of insurance~~ that in the event a change is made to a qualified policy or certificate that is eligible for favorable tax status that may affect its favorable tax status, the issuer shall disclose this fact to the policyholder or certificate holder prior to the change being made, and, at a minimum, the issuer shall advise the policyholder or certificate holder that they should consult a tax advisor.

(Department of Insurance; 760 IAC 2-20-34; filed Nov 20, 1992, 9:00 a.m.: 16 IR 1149; filed Jun 15, 1994, 10:00 a.m.: 17 IR 2646; errata filed Sep 28, 1994, 3:30 p.m.: 18 IR 268; filed Jul 28, 1997, 1:50 p.m.: 20 IR 3370; filed Feb 9, 1999, 5:02 p.m.: 22 IR 1990; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 40. 760 IAC 2-20-35 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-35 Minimum benefit standards for qualifying policies, certificates, and riders

Authority: IC 27-8-12-7.1

Affected: IC 12-10-12; IC 12-15-2

Sec. 35. No long term care insurance policy, certificate, or rider may be advertised, solicited, or issued for delivery in this state as a qualified long term care insurance policy, certificate, or rider ~~which that~~ does not meet the minimum benefit standards in this section and ~~which that~~ has not been approved by the commissioner of the department of insurance as a qualified long term care insurance policy, certificate, or rider. These minimum standards do not preclude the inclusion of other

provisions or benefits which are not inconsistent with these standards. These standards are in addition to all other requirements of this article. In order to qualify for participation in the Indiana long term care program, a long term care insurance policy, certificate, or rider shall meet the following:

(1) Provide that maximum benefits be available in dollars and not in days of care.

(2) Include a provision of inflation protection ~~which that~~ satisfies at least one (1) of the following criteria:

(A) The policy or certificate covers at least seventy-five percent (75%) of the average daily private pay rate.

(B) The policy or certificate provides for automatic increases in the per diem dollar level in accordance with either the consumer price index or at five percent (5%) each year over the previous year for each year that the contract is in force.

(C) For policyholders or certificate holders seventy-five (75) years of age or greater at time of purchase, the policy or certificate provides for automatic increases in the per diem dollar level at five percent (5%) each year that the contract is in force.

(3) Provide that the unused maximum benefit amount of the policy, certificate, or rider increase proportionately with the inflation protection requirements of subdivision (2).

(Department of Insurance; 760 IAC 2-20-35; filed Nov 20, 1992, 9:00 a.m.: 16 IR 1151; filed Jun 15, 1994, 10:00 a.m.: 17 IR 2649; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 41. 760 IAC 2-20-36.1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-36.1 Minimum benefit standards and required policy and certificate provisions for integrated policies

Authority: IC 27-8-12-7.1

Affected: IC 12-15-2; IC 12-15-39.6

Sec. 36.1. No long term care insurance policy or certificate may be advertised, solicited, or issued for delivery in this state as a qualified integrated policy or certificate ~~which that~~ does not meet the minimum benefit standards and required policy and certificate provisions in this section and ~~which that~~ has not been approved by the commissioner of the department ~~of insurance~~ as a qualified long term care insurance policy or certificate. These minimum standards do not preclude the inclusion of other provisions or benefits ~~which that~~ are not inconsistent with these standards. These standards are in addition to all other requirements of this article. In order to qualify for participation in the Indiana long term care program, an integrated policy or certificate must meet the following:

(1) Contain a maximum benefit amount equivalent to at least three hundred sixty-five (365) times the minimum daily nursing facility benefit defined in subdivision (3)(A).

(2) Offer a maximum benefit amount option equivalent to

three hundred sixty-five (365) times the minimum daily nursing facility benefit defined in subdivision (3)(A). Issuers may offer other benefit amount options in addition to this minimum benefit amount option.

(3) At a minimum, upon the initial effective date, provide the following:

(A) A daily nursing facility benefit of at least seventy-five percent (75%) of the average daily private pay rate in nursing facilities rounded to the next highest five dollar (\$5) or ten dollar (\$10) increment. No policy or certificate shall pay benefits in excess of the actual charges.

(B) A daily home and community based benefit of at least fifty percent (50%) of the daily nursing facility benefit contained in the policy or certificate. No policy or certificate shall pay benefits in excess of the actual charges.

(C) The daily home and community based benefit shall not exceed the daily nursing facility benefit.

(4) If issued on an expense incurred basis, provide benefits ~~which that~~ are equal to at least seventy-five percent (75%) of the per diem cost incurred by the insured.

(5) Include a provision that policy or certificate benefits can be used to purchase nursing facility care or home and community-based care. Home and community-based care shall include, at a minimum, but not be limited to, the following:

- (A) Home health nursing.
- (B) Home health aide services.
- (C) Attendant care.
- (D) Respite care.
- (E) Adult day care services.

(6) All home and community-based services shall include case management services delivered by a case management agency. The issuer may establish a limit on case management benefits. This limit shall not be less than thirteen (13) times the daily nursing home benefit per year. Case management benefits shall not count toward the policy's or certificate's maximum benefit.

(7) Issuers may include benefits for residential care facilities, as defined in section 31.1 of this rule, in an integrated policy or certificate. These policies must:

(A) provide a daily residential care facility benefit of at least ~~fifty seventy-five~~ percent (~~50%~~) (75%) and no more than the daily nursing facility benefit contained in the policy or certificate;

(B) if issued on an expense incurred basis, provide a daily residential care facility benefit ~~which that~~ does not exceed ~~fifty seventy-five~~ percent (~~50%~~) (75%) of the per diem cost incurred by the insured; and

(C) include a provision that policy or certificate benefits can be used to purchase care in a nursing facility or residential care facility.

(Department of Insurance; 760 IAC 2-20-36.1; filed Jun 15, 1994, 10:00 a.m.: 17 IR 2651; errata filed Sep 28, 1994, 3:30 p.m.: 18 IR 268; filed Feb 9, 1999, 5:02 p.m.: 22 IR 1994;

readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 42. 760 IAC 2-20-36.2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-36.2 Minimum benefit standards and required policy and certificate provisions for long term care facility policies

Authority: IC 27-8-12-7.1

Affected: IC 12-15-2; IC 12-15-39.6

Sec. 36.2. No long term care insurance policy or certificate may be advertised, solicited, or issued for delivery in this state as a qualified long term care facility policy or certificate ~~which that~~ does not meet the minimum benefit standards and required policy and certificate provisions in this section, and ~~which that~~ has not been approved by the commissioner of the department of insurance as a qualified long term care insurance policy or certificate. These minimum standards do not preclude the inclusion of other provisions or benefits ~~which that~~ are not inconsistent with these standards. These standards are in addition to all other requirements of this article. In order to qualify for participation in the Indiana long term care program, a long term care facility policy or certificate must meet the following:

(1) Contain a maximum benefit amount equivalent to at least three hundred sixty-five (365) times the minimum daily nursing facility benefit defined in subdivision (3).

(2) Offer a maximum benefit amount option equivalent to three hundred sixty-five (365) times the minimum daily nursing facility benefit defined in subdivision (3). Issuers may offer other benefit amount options in addition to this minimum benefit amount option.

(3) At a minimum, upon the initial effective date, provide a daily nursing facility benefit of at least seventy-five percent (75%) of the average daily private pay rate in nursing facilities rounded to the next highest five dollar (\$5) or ten dollar (\$10) increment. No policy or certificate shall pay benefits in excess of the actual charges.

(4) If issued on an expense incurred basis, provide daily nursing facility benefits ~~which that~~ are equal to at least seventy-five percent (75%) of the per diem cost incurred by the insured.

(5) Issuers may include benefits for residential care facilities, as defined in section 31.1 of this rule, in a long term care facility policy or certificate. Policies and certificates ~~which that~~ include residential care facility benefits must:

(A) provide a daily residential care facility benefit of at least ~~fifty seventy-five~~ percent (~~50%~~) (75%) and no more than the daily nursing facility benefit contained in the policy or certificate;

(B) if issued on an expense incurred basis, provide a daily residential care facility benefit ~~which that~~ does not exceed ~~fifty seventy-five~~ percent (~~50%~~) (75%) of the per diem

cost incurred by the insured; and

(C) include a provision that policy or certificate benefits can be used to purchase care in a nursing facility or a residential care facility.

(Department of Insurance; 760 IAC 2-20-36.2; filed Jun 15, 1994, 10:00 a.m.: 17 IR 2652; errata filed Sep 28, 1994, 3:30 p.m.: 18 IR 268; filed Feb 9, 1999, 5:02 p.m.: 22 IR 1995; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 43. 760 IAC 2-20-37.2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-37.2 Reporting of insurance producer data

Authority: IC 27-8-12-7.1

Affected: IC 12-15-2; IC 12-15-39.6

Sec. 37.2. Issuers of qualified policies or certificates shall submit **agent insurance producer** sales data to OMPP two (2) times per year for purposes of creating and maintaining a directory of **agents insurance producers** for consumers. The format, time frame of reporting periods, and due date for data will be specified by OMPP. *(Department of Insurance; 760 IAC 2-20-37.2; filed Feb 9, 1999, 5:02 p.m.: 22 IR 1997; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 44. 760 IAC 2-20-37.3 IS ADDED TO READ AS FOLLOWS:

760 IAC 2-20-37.3 Reporting of sales data

Authority: IC 27-8-12-7.1

Affected: IC 12-15-2; IC 12-15-39.6

Sec. 37.3. Issuers of qualified policies or certificates shall submit Indiana sales data for qualified and nonqualified long term care insurance policies or certificates annually to OMPP. The format and time frame for reporting this data will be specified by OMPP. *(Department of Insurance; 760 IAC 2-20-37.3)*

SECTION 45. 760 IAC 2-20-38.1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-38.1 Determining asset protection

Authority: IC 27-8-12-7.1

Affected: IC 12-15-2; IC 12-15-39.6

Sec. 38.1. (a) Total asset protection for an individually owned qualified policy or certificate is earned when:

(1) the policy or certificate includes a maximum benefit equal to or greater than the state-set dollar amount in force on the original effective date of the policy or certificate;

(2) the policy or certificate includes an inflation protection benefit of five percent (5%) compounded annually;

~~(2) (3)~~ (3) the maximum benefit was not reduced by the request of the policyholder or certificate holder during the term of the policy or certificate; and

~~(3) (4)~~ (4) all of the qualified policy or certificate benefits have been exhausted.

(b) Total asset protection for a qualified policy or certificate that has had a reduction of coverage during the term of the policy or certificate is earned when:

(1) the policy or certificate includes a maximum benefit equal to or greater than the state-set dollar amount in force on the original effective date of the policy or certificate;

(2) the maximum benefit was reduced at the request of the policyholder or certificate holder during the term of the policy or certificate, and, at the time of the reduction, the new maximum benefit was equal to or greater than the state-set dollar amount in force during the calendar year in which the reduction took place disregarding any qualifying insurance benefits the policyholder or certificate holder may have already received from the policy or certificate being reduced; and

(3) all of the qualified policy or certificate benefits have been exhausted.

(c) Total asset protection for a qualified policy, certificate, or rider that allows spouses to share the benefits is earned when the policy or certificate includes a maximum benefit equal to or greater than the state-set dollar amount in force on the original effective date of the policy or certificate, and either:

(1) only one (1) spouse uses the policy or certificate benefits and exhausts all of the qualifying insurance benefits; or

(2) both spouses use the policy or certificate benefits and the remaining maximum benefit at the time the first spouse has permanently stopped using benefits is equal to or greater than the state-set dollar amount in force during that calendar year disregarding any qualifying insurance benefits the second spouse may have already received, and the second spouse exhausts the remaining qualifying insurance benefits.

(d) Dollar-for-dollar asset protection is earned for all other situations ~~which that~~ differ from **subsections (a) ~~(b)~~ and through (c)**.

(e) A qualified long term care insurance policy or certificate owned by an Indiana resident ~~which that~~ was purchased as part of another state's Partnership for Long Term Care Program will earn dollar-for-dollar asset protection for the qualified insured if the other state's program is similar to the Indiana long term care program and OMPP has a reciprocity agreement with the other state's Medicaid program.

(f) Benefits paid in excess of the actual charges do not earn asset protection.

(g) Benefits paid that are not based upon the insured event criteria do not earn asset protection.

(h) Home and community care benefits paid without case management do not earn asset protection. *(Department of*

Insurance; 760 IAC 2-20-38.1; filed Feb 9, 1999, 5:02 p.m.: 22 IR 1998; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 46. 760 IAC 2-20-42 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-20-42 Auditing and correcting deficiencies in issuer record keeping

Authority: IC 27-8-12-7.1

Affected: IC 12-15-2; IC 12-15-39.6

Sec. 42. (a) Within one (1) year of the first date that any policyholder or certificate holder of a particular issuer's policy or certificate has met the criteria for the insured event, and as often as the commissioner or OMPP deems necessary thereafter, OMPP as representative of the commissioner shall conduct a systems audit of that company's records. The issuer shall be responsible for advising OMPP and the department of insurance when this one (1) year period has begun. OMPP shall promptly inform each issuer of inaccuracies and other potential problems discovered in its systems audits and shall instruct the issuer of the methods necessary to correct any problems in the issuer's methods of operation. It is the responsibility of the issuer to make any necessary corrections.

(b) OMPP shall periodically reconcile a sample of individual applications to Medicaid of persons who have submitted documentation for qualification for asset protection with the reports submitted by issuers. OMPP shall have the final decision concerning sample sizes and other auditing methods. OMPP shall promptly advise issuers of any problems discovered and shall instruct the issuer of the methods necessary to correct any problems in the issuer's method of operation. OMPP shall also notify the issuer of any obligations described in this subsection to hold clients harmless.

(c) The assistant secretary of OMPP or other authorized individual may enter into voluntary arrangements with issuers of qualified long term care insurance policies and certificates under which the assistant secretary would issue binding determinations as to whether or not services qualify for asset protection. Policyholders or certificate holders may submit requests for information and advice through their issuer or case management agency. When the following procedures are followed in all material respects, the written determinations of the assistant secretary of OMPP or other authorized individual concerning whether services qualify for asset protection shall be binding upon OMPP in all subsequent actions, and OMPP shall not make any assertion contradicting these determinations in any action arising in this subsection:

(1) All requests for determinations as to whether or not services qualify for asset protection shall be submitted to the assistant secretary of OMPP or other authorized individual in writing. These requests may include, but are not limited to, requests for determinations in the following areas:

(A) Whether the insured event has occurred and has been

adequately documented.

(B) Whether a care plan is required.

(C) Whether a revision of a care plan is required.

(D) Whether a service or services are in accord with the care plan.

(E) Whether a service is of such a nature as to qualify for asset protection.

(F) Whether the applicable amount is the amount paid by the issuer or the amount charged for the service.

(2) The assistant secretary of OMPP or other authorized individual may require issuers and case management agencies submitting requests for determination to provide all records and other information necessary for making a determination. The records and other information may include, but are not limited to, the following:

(A) Assessments.

(B) Care plans.

(C) Invoices for services rendered.

The party providing the records and other information shall be responsible for their accuracy. If any records or other information are later determined to be materially inaccurate, the determination based on the inaccurate information shall be void and not be binding on OMPP or any other person or entity in subsequent actions. In the case of a policyholder or certificate holder for whom a determination has been invalidated because information provided was determined to be inaccurate, the provisions of subsections (f) and (g) will apply in the same manner as for any other policyholder or certificate holder.

(3) The assistant secretary of OMPP or other authorized individual shall render his or her determination on each request in writing. Each determination of the assistant secretary of OMPP or other authorized individual shall state the reason for his or her determination, including the following:

(A) Relevant facts.

(B) Documentation of facts.

(C) Statutes.

(D) Regulations.

(E) Policies.

(4) A copy of all determinations of the assistant secretary of OMPP or other authorized individual shall be kept on file at OMPP, together with the related records and information. The original of the determination shall be sent to the issuer or the case management agency that originally requested it. The recipient of the original determination shall be responsible for notifying the policyholder or certificate holder or the policyholder's or certificate holder's authorized ~~agent~~ **insurance producer**.

(d) When an audit or other review by OMPP reveals deficiencies in the record keeping procedures of an issuer, OMPP will notify the issuer of the deficiencies and establish a reasonable deadline for correction. If an issuer fails to correct deficiencies discovered by OMPP within a reasonable period of time, OMPP

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will notify the department of insurance of the deficiencies.

(e) The commissioner of the department, ~~of insurance~~, upon consultation with OMPP, shall reserve the right to remove qualification status of long term care insurance policies and certificates when deemed necessary. Failure to comply with ~~any of the provisions of~~ this article can be grounds for the removal of qualification status. If the department of insurance removes qualification status from a long term care insurance policy or certificate, a policyholder or certificate holder who purchased his or her policy or certificate while the policy or certificate was qualified will retain his or her right to asset protection. A policyholder or certificate holder who purchases his or her policy or certificate after the removal of qualification status will have no right to asset protection. Any issuer who has their qualification status removed must continue to comply with the reporting requirements and maintaining auditing information requirements set forth in this article.

(f) If an issuer prepares a service summary ~~which that~~ is used in a Medicaid application for a policyholder or certificate holder and the client is found eligible for Medicaid, and the policyholder or certificate holder after receiving Medicaid services is found to be ineligible for Medicaid solely by reason of errors in the issuer's service summary or documentation of services, OMPP may require the issuer to pay for services counting towards asset protection required by the policyholder or certificate holder until the issuer has paid an amount equal to the amount of the issuer's errors, after which the policyholder or certificate holder, if otherwise eligible, could qualify for Medicaid coverage.

(g) If OMPP determines that an issuer's records pertaining to a policyholder or certificate holder who has received Medicaid benefits are in such condition that OMPP cannot determine whether the policyholder or certificate holder qualifies for asset protection, OMPP may require the issuer to pay for services counting towards asset protection required by the policyholder or certificate holder until the issuer has paid an amount equal to the amount of the issuer's error, after which the policyholder or certificate holder, if otherwise eligible, could qualify for Medicaid coverage.

(h) OMPP shall serve as the representative of the commissioner for all audits and examinations that may be required to determine compliance with this article.

(i) Compliance with subsections (f) and (g) is a requirement for a policy or certificate to retain qualification. (*Department of Insurance; 760 IAC 2-20-42; filed Nov 20, 1992, 9:00 a.m.: 16 IR 1157; filed Feb 9, 1999, 5:02 p.m.: 22 IR 2000; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 30, 2004 at 10:00 a.m., at the Department of Insurance, 311 West

Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed rule to amend 760 IAC 2 regarding long term care insurance. Copies are available on the Department of Insurance's Web site at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

Proposed Rule
LSA Document #04-98

DIGEST

Amends 872 IAC 1-3-3.3 to revise requirements for college courses to count for continuing professional education credit. Effective 30 days after filing with the secretary of state.

872 IAC 1-3-3.3

SECTION 1. 872 IAC 1-3-3.3 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-3-3.3 College courses as CPE

Authority: IC 25-2.1-2-15

Affected: IC 25-2.1-4-5

Sec. 3.3. (a) ~~Credit for graduate level courses will be limited to fifty percent (50%) of the total minimum requirement for the reporting period. Credit shall be given at the rate of fifteen (15) CPE hours for each semester credit hour. CPE credit granted for these hours will be given only for a grade of C or above. Grade D or F is not considered as satisfactory completion of a course by the board.~~

(a) College courses that meet the requirements of this rule may be counted for CPE credit as permitted by this section.

(b) All licensees will be given CPE credit for graduate level courses.

~~(b) CPE credit granted to~~ (c) Public accountants and accounting practitioners who do not hold a bachelor's degree with required hours in accounting, business administration, and economics and who are taking undergraduate courses in an accredited university or college in accounting, business administration, and economics ~~shall be given at the rate of fifteen (15) may receive CPE hours for each semester credit. hour.~~

(d) CPE credit under this section shall be given at the rate

of fifteen (15) CPE hours for each semester credit hour. CPE credit granted for these hours will be given only for a grade of C or above. A grade ~~D~~ of C- or F below is not considered as satisfactory completion of an undergraduate a course by the board. ~~Total time under this subsection is limited to fifty percent (50%) of the total minimum requirement for the reporting period.~~ (Indiana Board of Accountancy; 872 IAC 1-3-3.3; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3936; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 20, 2004 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 5, Indianapolis, Indiana the Indiana Board of Accountancy will hold a public hearing on proposed amendments to revise the requirements for continuing professional education credit granted for college courses. 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

**TITLE 905 ALCOHOL AND TOBACCO
COMMISSION**

Proposed Rule
LSA Document #04-110

DIGEST

Amends 905 IAC 1-15.2-3 to clarify the conditions under which a minor in a permit premises that has no bar is considered to be loitering. Effective 30 days after filing with the secretary of state.

905 IAC 1-15.2-3

SECTION 1. 905 IAC 1-15.2-3 IS AMENDED TO READ AS FOLLOWS:

905 IAC 1-15.2-3 Loitering

Authority: IC 7.1-2-3-7
Affected: IC 7.1-5

Sec. 3. (a) A minor in that part of a restaurant permit premises that has no bar shall be considered to be loitering unless he or she ~~(+)~~ is accompanied by his or her parent, legal guardian, or family member who is **at least** twenty-one (21) years of age. ~~or older;~~

(b) A minor in that part of a restaurant permit premises

that has no bar who does not meet the conditions of subsection (a) shall be considered to be loitering unless he or she:
~~(2)~~ (1) has placed an order for food and said order has not been served;
~~(3)~~ (2) is eating; or
~~(4)~~ (3) is viewing or listening to lawful nonparticipatory entertainment; ~~provided by the establishment;~~ provided, however, that said entertainment may not consist solely of music, whether live or recorded, **and which shall not include adult entertainment.**

(c) As used in this rule, “adult entertainment” means any activity of a sexual nature, including that permitted under **905 IAC 1-16.1-3.** (Alcohol and Tobacco Commission; 905 IAC 1-15.2-3; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1444; filed Jun 21, 2001, 2:30 p.m.: 24 IR 3651; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 26, 2004 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed amendment to clarify the conditions under which a minor inside a permit premises is considered to be loitering. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission

**TITLE 905 ALCOHOL AND TOBACCO
COMMISSION**

Proposed Rule
LSA Document #04-111

DIGEST

Amends 905 IAC 1-5.2-9.2 to allow for the sampling of beer from retailers to consumers. Effective 30 days after filing with the secretary of state.

905 IAC 1-5.2-9.2

SECTION 1. 905 IAC 1-5.2-9.2, AS ADDED AT 27 IR 2281, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

905 IAC 1-5.2-9.2 Samples; consumer product sampling

Authority: IC 7.1-2-3-7; IC 7.1-2-3-8; IC 7.1-2-3-22
Affected: IC 7.1-3-9-11; IC 7.1-3-10-13; IC 7.1-3-14-7; IC 7.1-5

Proposed Rules

Sec. 9.2. A liquor dealer who is the proprietor of a package liquor store, a liquor retailer, or a wine retailer may offer a product sampling authorized under IC 7.1-3-9-11, IC 7.1-3-10-13, or IC 7.1-3-14-7, in accordance with the following:

(1) Product that is to be used for a consumer product sampling may be provided by a primary source of supply or wholesaler to an authorized liquor dealer, liquor retailer, or wine retailer, but must be offered to all authorized liquor dealers, liquor retailers, and wine retailers in a nondiscriminatory manner. Samples provided to the liquor dealer, liquor retailer, or wine retailer must be properly invoiced by the authorized wholesaler, and the invoice shall clearly show the product being used for consumer product sampling. A primary source of supply or wholesaler may only provide products to a liquor dealer who is the proprietor of a liquor store, a liquor retailer, or a wine retailer that are lawful for the liquor dealer, liquor retailer, or wine retailer to ordinarily sell under their scope of permit.

(2) In addition to product that is provided in accordance with subdivision (1), an authorized liquor dealer, liquor retailer, or wine retailer may purchase product to be used for consumer sampling from an authorized wholesaler.

(3) A sampling described in this subsection may only be conducted by licensed employees of the liquor dealer, liquor retailer, wine retailer, wholesaler, primary source of supply, or a company engaged by a primary source of supply or wholesaler whose primary business is to conduct sampling or tasting promotions on the permit premises and during the normal business hours of the liquor dealer, liquor retailer, or wine retailer.

(4) The following limitations apply to the number of samples a **customer person** may sample and the size of samples provided to a **customer person** by a liquor dealer, liquor retailer, or wine retailer:

(A) A liquor retailer or a liquor dealer who is the proprietor of a package liquor store may offer a combined total not to exceed two (2) samples of liquor, liqueurs, premixed cocktails, or cordials per **customer person** in a day. A liqueur, premixed cocktail, or cordial sample may not exceed one-half (0.5) ounce, and a sample of liquor may not exceed four-tenths (0.4) ounce.

(B) A liquor retailer, a liquor dealer, or a wine retailer may offer wine samples not to exceed one (1) ounce.

(C) A liquor retailer, a liquor dealer who is the proprietor of a package liquor store, or any other retailer permitted by law may offer beer samples not to exceed six (6) ounces. A person may not sample more than twelve (12) ounces per sampling event under this subsection.

(D) Any sample provided by a liquor dealer, liquor retailer, or wine retailer to a **consumer person** must be provided in a nondiscriminatory manner.

(5) A liquor dealer, liquor retailer, or wine retailer may not charge a fee to a **consumer person** for a sample.

(6) If a liquor dealer, liquor retailer, or wine retailer modifies

their existing floor plan to provide for the sampling, then amended floor plans must be submitted to and approved by the Indiana state excise police.

(7) For a consumer product sampling described in this section, a primary source of supply or wholesaler may not give a liquor retailer, wine retailer, or a liquor dealer who is the proprietor of a package liquor store an aggregate amount of more than **one thousand seven hundred twenty-eight (1,728) ounces of beer, no more than eight hundred sixty-four (864) of which may be of the same product**, nine (9) liters of wine, of which no more than three (3) liters may be the same product, or two and twenty-five hundredths (2.25) liters of liquor, liqueurs, premixed cocktails, or cordials per sampling event.

(Alcohol and Tobacco Commission; 905 IAC 1-5.2-9.2; filed Mar 4, 2004, 10:00 a.m.: 27 IR 2281)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 26, 2004 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed amendment to allow the sampling of beer from retailers to consumers. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Proposed Rule

LSA Document #04-112

DIGEST

Adds 905 IAC 1-26-3 to provide that a letter of extension may be withdrawn before or during the time the extension is in effect. Effective 30 days after filing with the secretary of state.

905 IAC 1-26-3

SECTION 1. 905 IAC 1-26-3 IS ADDED TO READ AS FOLLOWS:

905 IAC 1-26-3 Revocation of letter of extension

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-1-3.1

Sec. 3. The commission may withdraw a letter of extension

sion for good cause at any time before or during the duration of the extension. (*Alcohol and Tobacco Commission; 905 IAC 1-26-3*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 26, 2004 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed new rule to allow the withdrawal of letters of extension. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Proposed Rule
LSA Document #04-115

DIGEST

Adds 905 IAC 1-48 to establish rules regarding the withdrawal of a consent to transfer a permit after the transfer has been filed with the commission up through and including the local board hearing. Effective 30 days after filing with the secretary of state.

905 IAC 1-48

SECTION 1. 905 IAC 1-48 IS ADDED TO READ AS FOLLOWS:

Rule 48. Withdrawal of Consent to Transfer Permit

905 IAC 1-48-1 Applicability

Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-24

Sec. 1. This rule applies to all transfers of permits under IC 7.1-3-24 and 905 IAC 1-17. (*Alcohol and Tobacco Commission; 905 IAC 1-48-1*)

905 IAC 1-48-2 Withdrawal of consent permitted more than 10 days before local board hearing

Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-24

Sec. 2. A withdrawal of a consent to transfer a permit is permitted if done in writing and sent to the transferee by

registered or certified mail, return receipt requested, not later than ten (10) days before the local board hearing on the transfer application. A permittee wishing to withdraw a consent to transfer under this section shall serve a copy of the withdrawal on the commission by personal delivery or registered or certified mail, return receipt requested, not later than ten (10) days before the local board hearing. (*Alcohol and Tobacco Commission; 905 IAC 1-48-2*)

905 IAC 1-48-3 Withdrawal of consent not permitted less than 10 days before local board hearing

Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-24

Sec. 3. A withdrawal of a consent to transfer a permit is not permitted if not in compliance with section 2 of this rule. Where a permittee attempts to withdraw a consent to transfer outside the time limit prescribed in section 2 of this rule, the withdrawal shall be disallowed and a local board shall hear the transfer application on the merits and shall accord the transferor the status of remonstrator. A local board shall not consider contractual disputes between the parties, but shall consider only the provisions of 905 IAC 1-27 or any other statute or rule relating to qualifications of a permittee or the appropriate location of a permit. (*Alcohol and Tobacco Commission; 905 IAC 1-48-3*)

905 IAC 1-48-4 Petition to transfer with withdrawn consent may not be heard by local board

Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-24

Sec. 4. A local board may not hear a petition for transfer of a permit where the consent to transfer has been withdrawn in compliance with section 2 of this rule. (*Alcohol and Tobacco Commission; 905 IAC 1-48-4*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 26, 2004 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed new rule regarding the withdrawal of a consent to transfer a permit after the transfer has been filed with the commission up through and including the local board hearing. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission

Indiana Register

Intent to Readopt Rules

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Readopted Rules

TITLE 140 BUREAU OF MOTOR VEHICLES

Notice of Intent
LSA Document #04-162

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rules to be readopted without changes are as follows:

140 IAC 4-4 Driver Education Classes
140 IAC 8-4 Crossroads 2000 Fund; Fee Increases

Questions or comments on the readoption may be directed to Cassandra Ashley-Jordan, Chief Legal Counsel, Bureau of Motor Vehicles at (317) 232-7043. Statutory authority: IC 9-14-2-2; IC 9-24-10-4; IC 9-29-1-2.

1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rule to be adopted without changes is as follows:

240 IAC 8 INDIANA DNA DATA BASE

Questions or comments on the readoption may be directed by mail to the Indiana State Police Department, Indiana Government Center-North, 100 N. Senate Ave., Room N340, Indianapolis, IN 46204 or by electronic mail to tsommer@isp.state.in.us. Statutory authority: IC 10-11-2-9; IC 10-13-6-8.

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Notice of Intent
LSA Document #04-163

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rules to be readopted without changes are as follows:

170 IAC 1-4 Mediation
170 IAC 1-5 Minimum Standard Filing Requirements

Questions or comments on the readoption may be directed by mail to the Indiana Utility Regulatory Commission, Indiana Government Center-South, 302 W. Washington Street, Room E306, Indianapolis, Indiana, 46204 or by electronic mail to lhitchman@urc.state.in.us. Statutory authority: IC 8-1-1-3.

TITLE 240 STATE POLICE DEPARTMENT

Notice of Intent
LSA Document #04-164

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January

**TITLE 685 REGULATED AMUSEMENT DEVICE
SAFETY BOARD**

Proposed Rule
LSA Document #04-124

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.

685 IAC 1

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

685 IAC 1 INDIANA AMUSEMENT DEVICE CODE***Notice of Public Hearing***

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on August 17, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Regulated Amusement Device Safety Board will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

*John Weesner
Department of Fire and Building Services
402 West Washington Street, Room W246
Indianapolis, Indiana 46204.*

Copies of these rules are now on file at the Department of Fire and Building Services, 402 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Luther J. Taylor, Sr.
Secretary
Fire Prevention and Building Safety Commission

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.

905 IAC 1-44

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

905 IAC 1-44 Revocation of Denied Permit***Notice of Public Hearing***

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on July 26, 2004 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

*Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission
Indiana Government Center-South
302 West Washington Street, Room E114
Indianapolis, Indiana 46204.*

Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission

**TITLE 905 ALCOHOL AND TOBACCO
COMMISSION**

Proposed Rule
LSA Document #04-109

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

60 Day Requirement (IC 4-22-2-19)

**TITLE 28 STATE INFORMATION TECHNOLOGY
OVERSIGHT COMMISSION**

May 25, 2004

Senator Luke Kenley
Representative Jerry Denbo
Administrative Rules Oversight Committee
C/o Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, IN 46204-2789
Attn: Sarah Burkman

Re: Notice of Delay in Adoption of Rule

Dear Senator Kenley and Representative Denbo:

Notice of Delay

This is to notify you pursuant to IC 4-22-2-19, that the Information Technology Oversight Commission did not begin the rulemaking process within sixty (60) days after the effective date of the statute, IC 4-23-16-12, that requires that a rule be adopted concerning the standards for accessibility for the disabled in information technology.

Reasons for Delay

This is the first administrative rule that the Information Technology Oversight Commission is involved in promulgating. We were not familiar with the rulemaking process. And only when we began to educate ourselves about that process, to begin promulgation of the rule, did we realize that we had failed both to begin the rulemaking process within sixty days of the effective date of the statute and to send this letter of notification.

In actuality, we could not have initiated the process within the sixty day period. Since the statute required that the Information Technology Oversight Commission form a group that includes representatives of the administrative, legislative and judicial branches of government and local units of government, the then chairperson of the commission asked the Governor's Office for a list of names of potential candidates. We received this list in November 2003. We contacted the people whose names were on the list, and we held our first meeting in February 2004. We have been meeting regularly to discuss and draft the rule.

Expected Date to Begin

The Information Technology Oversight Commission began the promulgation process in April, 2004.

Your understanding of these circumstances is greatly appreci-

ated. If you have any further concerns or require additional information, please do not hesitate to contact me, at 317/232-3175 or dseidman@doit.in.gov. Thank you.

Sincerely,

G. Douglas Seidman
Staff Counsel

Copies to: Chuck Mayfield, Fiscal Analyst
Indiana Register

365 Day Notice (IC 4-22-2-25)

**TITLE 460 DIVISION OF DISABILITY, AGING, AND
REHABILITATIVE SERVICES**

LSA Document #03-245

To: The Honorable Jerry Denbo, Chairperson
C/o Ms. Sarah Burkman
The Administrative Rules Oversight Committee

From: Kevin Wild, Staff Attorney
Office of General Counsel
Family and Social Services Administration

Re: LSA #03-245, Bureau of Aging and In-Home Services
Provider Standards Rule

Date: June 2, 2004

Cc: Steve Barnes, LSA
Rachel McGeever, General Counsel, FSSA
Kristen Schunk, Director, DDARS

On behalf of the Family and Social Services Administration, Division of Disability, Aging and Rehabilitative Services, I am submitting this memo to the Administrative Rules Oversight Committee in compliance with IC 4-22-2-25, because the agency has determined that the promulgation of the captioned rule may not be completed within one year after publication of the notice of intent to adopt a rule.

The agency published its notice of intent to adopt a rule for the captioned document on October 1, 2003 (27 IR 209). Due to the several personnel changes within the Division, including the departure of some working with development of this rule, the length and complexity of this rule, and the need for significant research and discussion regarding its provisions, this rule has taken longer than expected to fully develop. In order to complete the research and development of the rule, the agency needs additional time.

In addition, any rule adopted by the agency must be approved by the Family and Social Services Committee (see IC 12-8-3), a committee that meets only once per month. It is possible a monthly meeting could occur without a quorum and therefore without any action being taken on an adopted rule. This would mean delayed approval until the next monthly meeting of the committee and presence of a quorum. Following approval by the FSSA committee, the rule must be submitted to the Attorney General's office. Pursuant to IC 4-22-2-32, the Attorney General has forty-five days to complete his review of a rule. Whether a quorum is present at a monthly meeting of the FSSA Committee and the Attorney General's time frame for rule review are outside of the agency's control. For these reasons, it may not be possible for the rule to be approved by the governor within one year of the date of publication of the notice of intent. The agency expects that the rule can be approved by the governor by December 1, 2004.

This notice setting forth the expected date of approval of LSA #03-245 as December 1, 2004, is being submitted in a timely manner. June 7, 2004 is the two hundred fiftieth day after the date of publication of the notice of intent to adopt a rule.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #03-233

To: Honorable Jerry Denbo, Co-Chairperson
Honorable Luke Kenley, Co-Chairperson
c/o Ms. Sarah Burkman
Administrative Rules Oversight Committee

From: Erin M. McQueen, Staff Attorney
Office of General Counsel
Family and Social Services Administration

Re: LSA #03-233 - Child Care Development Fund Program
Child Care Provider Standards Rule

Date: May 6, 2004

Cc: Chuck Mayfield, Legislative Services Agency
Rachel McGeever, General Counsel, FSSA
Lanier DeGrella, Deputy Director, DFC/BCD
Janet Deahl, Manager, Educare, DFC/BCD

On behalf of the Family and Social Services Administration, Division of Family and Children, Bureau of Child Development, I am submitting this notice to the Administrative Rules Oversight Committee in compliance with IC 4-22-2-25, because the division has determined there is a possibility that the promulgation of the captioned rule may not be completed within one year after publication of the notice of intent to adopt a rule.

The division published its notice of intent to adopt a rule for the captioned document on September 1, 2004 (26 IR 3907). The proposed rule was published on February 1, 2004 (27 IR 1626). There was a delay in publishing the proposed rule because the division gave careful consideration to the requirements for the proposed rule and how the rule would be implemented by the program. Therefore, it took additional time to draft the proposed rule. Three public hearings were held on February 26, 2004; March 2, 2004 and March 4, 2004 in the northern, central and southern parts of the state. The written comment period was left open to March 26, 2004 to allow additional time for all interested persons to give comments on the proposed rule. The division received comments both at the public hearings and in written form. The division is still in the process of giving careful consideration to all the public comments and taking the necessary steps for program implementation. Consequently, the rule still needs to be finalized and adopted by the division.

Once the rule is adopted by the division, it has to be approved by the Family and Social Services Committee (see IC 12-8-3), a committee that only meets once a month. The committee currently have some vacancies for the committee and it is possible a monthly meeting could occur without a quorum and therefore without any action taken on an adopted rule. This would mean delayed approval until the next monthly meeting of the committee and presence of a quorum. Following approval by the FSSA committee, the rule must be submitted to the Attorney General's office. Pursuant to IC 4-22-2-32, the Attorney General has forty-five days to complete his review of a rule. Whether a quorum is present at a monthly meeting of the FSSA Committee and the Attorney General's time frame for rule review are outside of the agency's control. For these reasons, it is unlikely that the rule will be approved by the governor within one year of the date of publication of the notice of intent. The agency expects that the rule can be approved by the governor by December 31, 2004.

This notice setting forth the expected date of approval of LSA Document #03-233 by December 31, 2004 is being submitted in a timely manner. May 7, 2004 is the two hundred fiftieth day after publication of the notice of intent to adopt a rule.

NOTICE OF DISAPPROVAL**TITLE 868 STATE PSYCHOLOGY BOARD**

LSA Document #03-60(F)

May 21, 2004

Sharon Bowman, Ph.D., Chairperson
Indiana State Psychology Board
402 West Washington Street, Room W066
Indianapolis, IN 46204

BY HAND DELIVERYRe: *Restricted Psychology Tests and Instruments Rule, LSA #03-60(F)*

Dear Dr. Bowman:

For the reasons outlined in this letter, I have decided to disapprove the Restricted Psychology Tests and Instruments Rule developed by the Psychology Board. I am not sure the rule as drafted strikes the proper balance. I am asking the board to get additional information, and I will ask the General Assembly to provide more detailed guidance to the board.

I have reviewed this rule with my staff, and understand the difficult task you were given by the General Assembly in promulgating this rule. I fully appreciate the hard work you and the board have done in trying to fulfill your mandate. I also thank you and the board for delaying final adoption of the rule so that my staff could meet with interested parties and try to further the discussion. Because today is the last day of the time period imposed by Title 4, I could have allowed the rule to expire by simply failing to sign it today. Instead, out of respect for all of the groups and individuals involved in the rulemaking process, I am taking action on the rule.

The proposed rule lists 235 tests or instruments as “restricted psychology tests and instruments as provided by IC 25-33-1-3(g) and IC 25-33-1-14(e).” I understand that the board has tried to choose tests that generate information leading to a life-impacting diagnosis with legal, medical, educational or other long-term consequences. You have provided examples of people who were misdiagnosed by non-psychologists because of an over-reliance on test results. You stated that these tests are a useful tool in your profession but are only one factor in assessing a patient, and they can be misused or misinterpreted.

I believe state government must look carefully at all available information when regulating a business or profession. We must balance our duty to protect the public against an environment where people have choices and access to services. While many of the tests in the rule may be a danger to the public if misused, they may also generate useful information that helps people, even when administered by non-psychologists.

Many of the public comments and discussions during this rulemaking concerned potential danger to the public that could arise if too many tests – or too few – were included in the rule. If too few tests are included, there is a danger of misuse of the tests by non-psychologists. If too many are included, the danger is over-restricting use of the tests so that people may not receive the mental health services they need.

I have concluded that the proposed rule with 235 tests is too broad. We need to consider more information, including how other states deal with this issue. There is also much confusion over whether and how speech pathologists, physical therapists, and educators can use tests within their practices and within our schools.

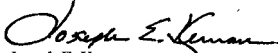
I will urge the General Assembly to take another look at IC 25-33-1-3, to provide more guidance on the kind of psychological tests that should be restricted and to consider possible mandatory disclosures to the public so that informed consumers can choose the mental health services they need for themselves or their loved ones.

This rulemaking has taken a long time, and delay has frustrated the intent of the statute. Approving this rule will not remove the frustration, as both sides have become entrenched in their positions over the last year. Misinformation and misunderstanding about the rule and the statute have created confusion. I think it is better to spend the additional time, now, clearing up the misunderstandings, clarifying the facts, and reducing the confusion. If we don’t resolve this in the rulemaking process, we are likely

to face even greater delay in the courts.

I believe the rule can be improved and can achieve a better balance. I trust that all parties will assist the board in a constructive way. We must work toward consensus. The goal of all parties should be the same: helping the public to obtain safe, effective mental health services. Pursuant to IC 4-22-2-34, I am therefore disapproving this rule and returning it to you.

Sincerely,


Joseph E. Kernan

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

#04-181(APCB)

DEVELOPMENT OF NEW RULES CONCERNING NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SURFACE COATING OF MISCELLANEOUS METAL PARTS AND PRODUCTS; AND SURFACE COATING OF PLASTIC PARTS AND PRODUCTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules concerning national emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and plastic parts. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 20-80; 326 IAC 20-81.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The 1990 Amendments to the Clean Air Act require the United States Environmental Protection Agency (U.S. EPA) to regulate major sources of hazardous air pollutants (HAPs). A major source is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that has the potential to emit, considering controls, ten (10) tons per year or more of any single hazardous air pollutant or twenty-five (25) tons per year or more of any combination of HAPs. HAPs are listed by U.S. EPA because they are either known or suspected to cause cancer or other serious health effects. There are currently one hundred eighty-eight (188) HAPs listed in the Clean Air Act. On July 16, 1992, U.S. EPA published a list of industrial groups or source categories that emit one (1) or more of the one hundred eighty-eight (188) listed HAPs (57 FR 311576). The Clean Air Act requires U.S. EPA to develop emission standards, referred to as national emission standards for hazardous air pollutants (NESHAPs), that require the application of air pollution reduction measures based on maximum achievable control technology (MACT) for the listed source categories. The "MACT floor" is the minimum control level allowed for NESHAPs and ensures that the standard is set at a level that assures that all existing major sources achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source.

Surface Coating of Miscellaneous Metal Parts and Products (40 CFR 63, Subpart MMMM)

Surface coating is a process of applying a protective, decorative, or functional coating to a substrate. Coating materials include, but are not limited to, paints, stains, sealers, topcoats, basecoats, primers, inks and adhesives. Metal parts and products include operations that cover a wide variety of metals that are located at a major source of HAPs. Many sources may be exempt if already subject to another surface coating NESHAP. Asphalt and coal tar applications to metal pipes are also included in this NESHAP. There are five subcategories: general use coating, high performance coating, magnet wire coating, rubber-to-

metal coating, and extreme performance fluoropolymer coating. Emission points include the surface coating application process, drying and curing operations, mixing and thinning operations, and cleaning operations.

The organic HAPs emitted by sources include xylenes, toluene, methyl ethyl ketone (MEK), phenol, cresols, glycol ethers, styrene, methyl isobutyl ketone (MIBK), and ethyl benzene. Exposure has been demonstrated to irritate the lung, skin, and mucous membranes and effect the central nervous system, liver, and heart. Emissions will be reduced by forty-eight percent (48%) from 1997 emission base levels. There are at least one hundred fourteen (114) potential Indiana sources. About forty-five percent (45%) sources are located in eight (8) hour ozone nonattainment counties. Sources must comply by January 2, 2007.

Surface Coating of Plastic Parts and Products (40 CFR 63, Subpart PPPP)

Plastic parts and products include plastic components of motor vehicle parts and accessories, sporting and recreational products, toys, business machines, laboratory and medical equipment, and household and consumer products. Operations covered by this NESHAP are divided into four subcategories: assembled on-road vehicle; general use; thermoplastic olefin; and automotive lamp. Emission limits would be set for all plastic parts and products surface coating operations that use more than 100 gallons of coatings per year in the surface coating of plastic parts and products and are located at a major source of HAPs. Many sources may be exempt if already subject to another surface coating NESHAP.

The organic HAPs emitted by sources include xylenes, toluene, methyl ethyl ketone (MEK), phenol, cresols, glycol ethers, styrene, methyl isobutyl ketone (MIBK), and ethyl benzene. Exposure has been demonstrated to irritate the lung, skin, and mucous membranes and effect the central nervous system, liver, and heart. Emissions will be reduced by 80 percent from estimated 1997 baseline levels. There are at least seventy (70) potential Indiana sources. Nearly half of the sources are located in non-attainment counties for eight (8) hour ozone standard. Sources must comply by April 19, 2007.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Straight Incorporation by Reference of Federal Standards.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Alternative 1 Plus Addition of Operator Training and Work Practice Standards.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? This alternative incorporates federal requirements, but also would include operator training and work practice standards that would result in even further emission reductions.
- Is this alternative imposed by federal law or is there a comparable federal law? The operator training and work practice standards are not imposed by federal law. (There are similar requirements in the Wood Furniture Manufacturing Operations NESHAP (40 CFR Part 63, Subpart JJ).)
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

IDEM must incorporate the federal requirements into state rules or

establish state requirements that are no less stringent than the federal requirements.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1

These NESHAPs are federal requirements and the state rulemaking will not result in additional costs to the regulated entities beyond costs resulting from complying with the existing federal requirements.

Potential Fiscal Impact of Alternative 2

The costs associated with operator training can vary greatly depending on the length of the training session, and if the training is performed by company personnel or an outside contractor. Some in-depth training programs range from two (2) to four (4) days. Other training programs are as simple as showing a fifteen minute video which reviews proper spray techniques.

Training by an outside contractor generally ranges from seven hundred fifty dollars (\$750) to one thousand five hundred dollars (\$1,500) per day; however, there are recent electronic innovations that permit interactive training and distance learning.

In a project that investigated the effects of hands-on operator training on the transfer efficiency of manually applied, air atomized, coating operations, results, published in the proceedings of the 51st Purdue University Industrial Waste Conference, showed a thirty-three (33%) decrease in VOC emissions as a result of operator training, which decreased cost to the source by a conservative ten percent (10%) in material usage.

The average improvement in transfer efficiency among the thirty (30) study participants was twenty-five percent (25%). The average decrease in VOC emissions from the coating application process was thirty-one percent (31%). Training a total of three hundred and eight (308) individuals, has resulted in an average improvement in transfer efficiency of twenty-three percent (23%), and a twenty-two percent (22%) decrease in material usage.

These studies were performed in a "laboratory setting" and not in a production setting. Actual reductions achieved will vary with the type of material sprayed, the type of application equipment, and the geometry of the substrate.

The addition of operator training and work practice standards is similar to requirements in other state rules. The requirement for operator training and work practice standards worked successfully for Indiana when it was required as part of the Wood Furniture Manufacturing Operations NESHAP (40 CFR 63, Subpart JJ). Conservative estimates include a state-wide reduction of 250 tons of VOCs and more than 75 tons of volatile hazardous air pollutants annually. This also resulted in a saving of at least \$700,000 for Indiana wood manufacturers.

Public Participation and Workgroup Information

IDEM will notify potential affected sources in Indiana. At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Gayl Killough, Rules Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could

reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#04-181(APCB) Group 6 NESHAPs

Gayl Killough

Rules Section

Office of Air Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the 10th floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Air Programs Branch at (317) 232-8415.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 2, 2004.

Additional information regarding this action may be obtained from Gayl Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Janet McCabe

Assistant Commissioner

Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

#04-182(APCB)

DEVELOPMENT OF NEW RULES CONCERNING COMPLIANCE ASSURANCE MONITORING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules in 326 IAC 3 concerning compliance assurance monitoring. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 3.

AUTHORITY: IC 13-14-8; IC 13-17-3; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The purpose of this rulemaking is to incorporate federal compliance assurance monitoring (CAM) requirements under 40 CFR 64 into the state rules and to include certain state requirements, such as the submittal of compliance response plans and quarterly monitoring reports, that are now implemented under other authorities, so that the compliance monitoring requirements are contained in one primary state rule.

Section 114(a)(3) of the Clean Air Act (CAA) required the U.S. EPA to develop regulations for monitoring of certain units at major sources that are required to obtain permits pursuant to 40 CFR Part 70 (Title V). U.S. EPA issued its final rule, Compliance Assurance Monitoring, 40 CFR Part 64, on October 22, 1997 (62 FR 54900). This federal regulation applies to Title V sources and contains a compliance schedule for compliance monitoring under 40 CFR 64. The federal CAM rule was challenged legally regarding enhanced monitoring, the phase-in time of the rule, and credible evidence by *NRDC v. EPA*, 194 F.3d 130, September 9, 1999. The court held that the requirements of enhanced monitoring comply with the CAA and the phase-in time is reasonable, clearing the way for states to incorporate these federal requirements into state rules.

Alternatives To Be Considered Within the Rulemaking

This rulemaking will consider adoption of federal compliance assurance monitoring requirements (62 FR 54900). The following options are available to Indiana:

Alternative 1. Adopt the federal requirements either as an incorporation by reference or full text into the state rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Adopt the federal rules either as incorporation by reference or full text, with additions to address specific concerns in Indiana.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes, except for any variations proposed to be adopted into the state rules.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law, except for any variations proposed to be adopted into the state rules.
- If it is a federal requirement, is it different from federal law? No, however variations could be proposed for consistency with current Indiana rules and policies.
- If it is different, describe the differences. See below.

Variations to the federal language that Indiana could consider under this alternative include the following:

- Add language to the federal CAM rule that would require quarterly monitoring reports rather than the Part 70 semiannual reports. The federal CAM rule refers to the semiannual reporting under Part 70, but the state rules, in 326 IAC 2-7-5, require reporting *at least* semiannually. Therefore, state rules that continue to require quarterly reporting is not precluded. Indiana currently requires quarterly reporting in certain permits. The more frequent reporting schedule provides the source and IDEM with more timely information that can identify potential problems.
- Add language that would clarify the requirements for responding to monitoring excursions and exceedances. This language could include a requirement to have a compliance response plan, and

could create a violation for failing to take a response step. The federal rule does require the owner or operator to return the process or control equipment to normal or usual operation, but does not require the preparation of a compliance response plan. It is not clear in the federal rule whether inaction is a violation, but language is provided that indicates that a permitting agency can make a determination about whether the owner or operator took appropriate steps in response to an excursion or exceedance. If a determination is made that inappropriate steps were taken, the agency can require that an owner or operator prepare and submit a Quality Improvement Plan for approval. Although not stated in the federal rule, the owner or operator could also be cited for failure to comply with the requirement to return control equipment to normal or usual operation, if appropriate actions are not taken. IDEM currently has the authority to require the submission of compliance response plans under Section 114(a)(I) of the Clean Air Act and state authority under IC 13-17-3-4. The specific regulatory requirement is found in 326 IAC 2-7-4(c). The information submitted in the compliance response plan will help ensure that the final compliance monitoring conditions in the permit will be more realistic and achievable. In addition, owners or operators will have information available to them that can indicate potential problems in emission control performance and they can act on that information in a timely fashion to avoid or reduce emission control problems that could result in excess emissions.

Alternative 3. Take no action to adopt the federal rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Because CAM is an applicable requirement, IDEM does not have to adopt the rule, although at least incorporating it by reference would make it clear that IDEM does have state authority to implement CAM.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

This rulemaking is based on the federal CAM rule as published in the Federal Register on October 22, 1997 (62 FR 54900). This federal rule implements compliance assurance monitoring (CAM) for major stationary sources of air pollution that are required to obtain operating permits under Title V of the Clean Air Act (CAA). Subject to certain exemptions, the new regulations require owners or operators of these sources to conduct monitoring that satisfies particular criteria established in the rule to provide a reasonable assurance of compliance with applicable requirements under the CAA.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. The federal CAM requirements must already be met by sources to which the federal rules apply. Incorporation by reference or full text incorporation into the state rules will not have a fiscal impact beyond that already imposed by the federal rules.

Potential Fiscal Impact of Alternative 2. There would be no fiscal impact from the incorporation of the federal CAM rules into the state rules. The variations under consideration should not impose a significant fiscal impact because these variations are already implemented by the department under other authorities.

Potential Fiscal Impact of Alternative 3. If no action is taken, then there would be no fiscal impact.

Public Participation and Workgroup Information

A list of interested parties was compiled during early rulemaking

steps of a related rule action (LSA #01-408). Interested parties will be invited to meet with IDEM as needed to discuss issues involved in this rulemaking. If you wish to attend meetings or have questions about the meetings, please contact Christine Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana), or by email at cpederse@dem.state.in.us. Please provide your name, phone number and email address, if applicable, where you can be contacted.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#04-182(APCB) Compliance Assurance Monitoring
Christine Pedersen
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the Tenth Floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 2, 2004.

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 (in Indiana).

Janet McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE #04-180(APCB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING CREDIBLE EVIDENCE

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule, 326 IAC 1-1-6, concerning the federal credible evidence revisions published in the Federal Register on February 24, 1997 (62 FR 8313), and has scheduled a public hearing/meeting before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-1-6.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

- (1) the rule constitutes:
 - (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
 - (i) is or will be applicable to Indiana; and
 - (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
 - (B) a technical amendment with no substantive effect on an existing Indiana rule; or
 - (C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and
- (2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:
 - (A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;
 - (B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and
 - (C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

Background and justification of IC 13-14-9-8

IDEM is proposing to add a new section, 326 IAC 1-1-6, under the general provisions, that will provide for the use of information other than specific reference test results under 40 CFR 60, Appendix A to prove or disprove violations of the Clean Air Act (CAA) or other applicable requirements. This non-reference information is known as credible evidence. Indiana is required to incorporate credible evidence provisions into state rules consistent with the SIP call published by U.S. EPA in 1997 (62 FR 8314).

The credible evidence revisions are based on EPA's statutory authority to use any available information, not just data from reference tests or other federally promulgated or approved compliance methods, to prove CAA violations. In addition to clarifying EPA's, states' and citizens' enforcement authorities under the Act, the credible evidence revisions eliminate any potential ambiguity regarding the use of non-reference test data as a basis for Title V compliance certifications.

The state rule will make it clear that various information, other than reference test data, which is often available and used for other purposes, may be used to demonstrate compliance or noncompliance with emission standards. This information may be in the form of non-reference test data or monitoring or production records. The credible evidence revision will not change or affect the stringency of any emission standards. It will also not affect compliance obligations such as exceptions for startup, shutdown, and malfunctions. This rule does not designate any particular data as probative of a violation of an emission standard. Rather, it only removes what might be construed to be a regulatory bar to the admission of non-reference test data to prove a violation of an emission standard or to use as the basis for certifying compliance. The credible evidence provision would also be available to businesses to support a claim of compliance just as it may be used as evidence of a violation.

This rulemaking also does not affect whether emission standards require intermittent or continuous compliance. U.S. EPA's and IDEM's position continues to be that an emission standard requires continuous compliance unless the emission standard specifically provides otherwise. Because many emission standards do not have reference methods that can supply compliance-related information on a continuous basis, this rule clarifies that there is a role for non-reference information.

In conclusion, this rule action is only intended to incorporate the federal credible evidence rule published in the Federal Register notice of February 24, 1997 (62 FR 8313). This rule incorporates the intent of the federal rule in full-text form and, therefore, is appropriate for the use of the Indiana notice provision under IC 13-14-9-8.

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. This rule is required by federal rule.

Potential Fiscal Impact

There is no fiscal impact imposed as a result of this state rule that is not currently imposed by the federal standard. Any fiscal impact was addressed during the federal rulemaking process.

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 appropriate, please contact Christine Pedersen, Rules Development Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana).

FINDINGS

The commissioner of IDEM has prepared findings regarding

rulemaking on credible evidence as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt the federal credible evidence requirement as established by the United States Environmental Protection Agency.
- (3) I have determined that under the specific circumstances pertaining to this rule there would be no benefit to the environment, or to persons to be regulated or otherwise affected by this rule, from proceeding with the first and second public comment periods.
- (4) The draft rule is hereby incorporated into these findings.

Lori F. Kaplan

Commissioner

Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

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

326 IAC 1-1-6 Credible evidence

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12

Affected: IC 13-11; IC 13-17

Sec. 6. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any emission limitation, standard, or rule in this title, nothing in this title shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with the emission limitation, standard, or rule, if the appropriate performance or compliance test or procedure had been performed. (*Air Pollution Control Board; 326 IAC 1-1-6*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on September 1, 2004 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on 326 IAC 1-1-6, credible evidence.

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 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015*

or call (317) 233-0855, (TDD): (317) 233-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
State of Indiana
Notice of Public Hearing on Proposed SFY 2005
Drinking Water State Revolving Fund (SRF) Program
Intended Use Plan (IUP)

Notice is given that Indiana's Drinking Water State Revolving Fund (DWSRF) Loan Program has developed a proposed State Fiscal Year 2005 Intended Use Plan (IUP). The IUP includes the Project Ranking System and Project Priority List (PPL) for drinking water system projects that could be funded through the DWSRF. The IUP is prepared annually and details the uses, goals and objectives of the DWSRF. The PPL is a list of potential projects for funding in order of priority as determined by the Priority Ranking System. Projects must be on the PPL to receive SRF financing. The PPL may be amended as described in the Project Ranking System.

Pursuant to 40 CFR 25.5, notice is given that the SRF Programs will hold a public hearing on the proposed IUP at 1:00 p.m., June 17, 2004, Indiana Government Center South, Conference Room 5, Indianapolis. The DWSRF IUP hearing will immediately follow the public hearing for the Wastewater SRF IUP.

Copies of the proposed SFY 2005 IUP, including the Project Ranking System and PPL, will be available June 3, 2004, for examination on the SRF Program's website at www.srf.in.gov and at the following locations:

- State Revolving Fund Program offices, Rm. 1275, Indiana Government Center North, 100 N. Senate Ave., Indianapolis;
- IDEM's Northwest Regional Office, 8315 Virginia Ave., Ste. 1, Merrillville;
- IDEM's Southwest Regional Office, 1120 N. Vincennes Ave., Petersburg;
- IDEM's Northern Regional Office, Colfax Place Building, 220 W. Colfax St., South Bend;
- Porter County Library, 103 Jefferson St., Valparaiso;
- St. Joseph County Public Library, 302 W. Wayne St., South Bend;
- Allen County Library, 900 Webster, Fort Wayne;
- Fulton County Public Library, 302 W. Seventh St., Rochester;
- Tippecanoe County Public Library, 627 South St., Lafayette;
- Marion Public Library, 600 S. Washington St., Marion;
- Morrison-Reeves Library, 80 N. Sixth St., Richmond;
- Vigo County Public Library, 1 Library Square, Terre Haute;
- Monroe County Public Library, 303 E. Kirkwood Ave., Bloomington;
- Jennings County Library, 143 E. Walnut St., North Vernon;
- Knox County Library, 502 N. Seventh St., Vincennes;
- Jasper-Dubois County Library, 1116 Main St., Jasper;
- New Albany-Floyd County Public Library, 180 W. Spring St., New Albany; and
- Willard Library of Evansville, 21 First Ave., Evansville.

Inquiries about and requests for the proposed SFY 2005 IUP should be directed to:

Ms. Cortney Stover
DWSRF Administrator
IGCN, Rm. 1275
Indianapolis, IN 46204
317/232-8663
cstover@dem.state.in.us

Interested persons are invited to be present or represented at the hearing. Oral statements will be heard; but for accuracy of the record, all testimony should be submitted in writing. Written statements may be provided to the hearing officer at the hearing or mailed to Ms. Stover at the above address, postmarked on or before June 27, 2004.

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
State of Indiana
Notice of Public Hearing on Proposed SFY 2005
Wastewater State Revolving Fund (SRF) Program
Intended Use Plan (IUP)

Notice is given that the Indiana Department of Environmental Management (IDEM) and State Budget Agency (SBA) have developed a proposed State Fiscal Year 2004 Intended Use Plan (IUP). The plan includes the Project Ranking System and Project Priority List (PPL) for wastewater projects that could be funded through the Wastewater State Revolving Fund. The IUP is prepared

annually and details the uses, goals and objectives of the State Revolving Fund. The PPL, which is prepared simultaneously, is a list of potential projects for funding in order of priority as determined by the Priority Ranking System. Projects must be on the PPL to receive SRF financing. The PPL may be amended as described in the Project Ranking System.

Pursuant to 40 CFR 25.5, notice is given that IDEM and SBA will hold a public hearing on the proposed IUP at 1:00 p.m., June 17, 2004, Indiana Government Center South, Conference Room 5, 402 West Washington St., Indianapolis. The hearing for the Drinking Water SRF IUP will immediately follow the public hearing for the Wastewater SRF IUP.

Copies of the proposed SFY 2005 IUP, including the Project Ranking System and PPL, will be available June 3, 2004, for examination on the SRF Program's website at www.srf.in.gov and at the following locations:

- State Revolving Fund Program offices, Rm. 1275, Indiana Government Center North, 100 North Senate Ave., Indianapolis;
- IDEM's Northwest Regional Office, 8315 Virginia Ave., Suite. 1, Merrillville;
- IDEM's Southwest Regional Office, 1120 N. Vincennes Ave., Petersburg;
- IDEM's Northern Regional Office, Colfax Place Building, 220 W. Colfax St., South Bend;
- Porter County Library, 103 Jefferson St., Valparaiso;
- St. Joseph County Public Library, 302 W. Wayne St., South Bend;
- Allen County Library, 900 Webster, Fort Wayne;
- Fulton County Public Library, 302 W. Seventh St., Rochester;
- Tippecanoe County Public Library, 627 South St., Lafayette;
- Marion Public Library, 600 S. Washington St., Marion;
- Morrison-Reeves Library, 80 N. Sixth St., Richmond;
- Vigo County Public Library, 1 Library Square, Terre Haute;
- Monroe County Public Library, 303 E. Kirkwood Ave., Bloomington;
- Jennings County Library, 143 E. Walnut St., North Vernon;
- Knox County Library, 502 N. Seventh St., Vincennes;
- Jasper-Dubois County Library, 1116 Main St., Jasper;
- New Albany-Floyd County Public Library, 180 W. Spring St., New Albany;
- and Willard Library of Evansville, 21 First Ave., Evansville.

Inquiries about and requests for the proposed SFY 2005 Intended Use Plan should be directed to:

Mr. Arthur Carter
WWSRF Administrator
State Revolving Fund Loan Programs
100 N. Senate Ave. Rm 1275
Indianapolis, IN 46206-6015
317/233-2474

Interested persons are invited to be present or represented at the hearing. Oral statements will be heard; but for accuracy of the record, all testimony should be submitted in writing. Written statements may be provided to the hearing officer at the hearing or mailed to Mr. Carter at the above address, postmarked on or before June 29, 2004.

**STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS**

EXECUTIVE ORDER: 04-13

FOR: THE CREATION OF THE INDIANA COMMISSION FOR EARLY LEARNING & SCHOOL READINESS

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, all children deserve quality early learning experiences from birth to age six to ensure that they are well prepared to succeed in the K-12 education system; and

WHEREAS, extensive brain research has established that brain development during the first years of life has a significant impact on later learning and intellectual growth; and

WHEREAS, scientific evidence supports a clear and compelling connection between the quality of a child's early learning experiences and later success in school and life; and

WHEREAS, parents are, and always will be, their children's first and most important teachers. As such, parents deserve to have the latest information on what they can do to promote healthy brain development in their infants and children; and

WHEREAS, parents must be supported in their efforts to provide quality care and learning opportunities for their children; and

WHEREAS, high-quality early childhood care and education is a good economic investment because children who have participated in high-quality pre-Kindergarten programs demonstrate higher math and reading scores, stronger learning skills, increased creativity, better school attendance, improved health, and greater involvement by parents in elementary school. Further, these children are less likely to drop out of school, less likely to repeat grades, less likely to need special education, and less likely to get in trouble with the law; and

WHEREAS, Indiana's policymakers and early education experts must work together to build on Indiana's successful early learning and wellness initiatives to ensure that every Hoosier child receives quality early learning experiences; and

WHEREAS, the goal of the Early Learning and School Readiness Commission is to fulfill the vision of a statewide, high-quality, accessible and comprehensive early learning and school readiness system to benefit all young children whose parents choose to access to the system.

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 Indiana Commission for Early Learning and School Readiness is established.
2. The Commission shall consist of no more than 32 members, who shall be appointed by and serve at the pleasure of the Governor. Two members of the Commission as identified by the Chair shall serve as ex-officio members of the Indiana Education Roundtable. The Commission membership shall include, but is not limited to, the following:
 - A member appointed by the Governor, who shall serve as co-chair;
 - The State Superintendent of Public Instruction, who shall serve as co-chair;
 - Two (2) members of the Senate, not more than one (1) of whom may be members of the same political party.
 - Two (2) members of the House of Representatives, not more than one (1) of whom may be members of the same political party.
 - A representative of institutions of higher education with focus on Early Childhood Education;
 - A public school superintendent of a district with a full-day kindergarten program and/or early learning initiative;
 - A public school principal of a school with a full-day kindergarten program and/or early learning initiative;
 - A member representing a local school board;
 - A teacher in a full-day kindergarten program;
 - A Director of a preschool cooperative and/or public early learning center;
 - A director of a child care center licensed in the State of Indiana;
 - A family/home care provider;
 - A Head Start provider;

- A child development specialist/researcher;
- A curriculum development specialist;
- A pediatrician;
- A member representing disabled children;
- The chair of the Indiana Child Care Fund;
- The executive director of the Indiana Association for the Education of Young Children (IAEYC);
- At least one member representing parents;
- At least one member representing business and community;
- The state budget director, who shall serve as a non-voting member;
- The secretary of the Family and Social Services Administration, who shall serve as a non-voting member;
- The commissioner of the State Department of Health, who shall serve as a non-voting member;
- The commissioner of the Department of Correction, who shall serve as a non-voting member;
- The executive director, Commission on Hispanic/Latino Affairs, who shall serve as a non-voting member; and
- The director of the Division of Special Learners for the Indiana Department of Education, who shall serve as a non-voting member.

3. Members shall be appointed to two-year terms. Members shall serve on a voluntary unpaid basis.

4. The Commission shall advise the Governor and the Superintendent of Public Instruction on the most effective policy direction and methods to improve the quality, coordination, delivery of and access to early education and school readiness services, including child care (including home and center-based), preschool and family support services and programs.

5. The Commission shall focus on implementation strategies for the early learning and school readiness goals of the “*P-16 Plan for Improving Student Achievement*” as adopted by the Indiana Education Roundtable, including ways to:

- Make sure every four-year-old child has access to high quality pre-kindergarten programs that help prepare them for success in school;
- Involve parents in the planning and implementation of all early learning and school readiness efforts;
- Provide parents, pediatricians, and others who work with children with information regarding cognitive (brain) development and the importance of reading to infants and children;
- Guarantee access to appropriate health screenings and high-quality developmental checkups for all children birth to age 7;
- Focus on reading;
- Ask Indiana employers to invest in the state’s future workforce by providing or partnering to provide high-quality child care and pre-kindergarten options for employees;
- Make high quality full-day kindergarten available for all children;

6. The Commission shall develop an inventory of the early learning and school readiness services for children birth to age six and resources now available through state agencies, local agencies and private organizations. Based on that inventory of state resources, the Commission shall recommend to the Governor and the Superintendent of Public Instruction areas in which:

- Services and resources can be used more effectively and efficiently;
- Quality programming can be established and promoted;
- Enhanced collaboration and communication is needed; and
- Services and resources should be reorganized either through administrative or legislative action.

7. The Commission shall identify and recommend methods to strengthen the transition between early learning programs for children below the age of school entry and the K-12 education system.

8. The Commission shall identify and recommend methods to strengthen the communication with parents, pediatricians and others who work with children about the critical role of early learning and school readiness.

9. The Commission shall identify and recommend methods to measure quality, availability and effectiveness of early education and school readiness programs in Indiana. The costs associated with this effort shall also be included.

10. In their work, the Commission shall identify and build on successful initiatives currently in place to integrate early childhood services and expand collaborative partnerships with business, education, human services, health, mental health, and others to support early learning.

11. The Commission shall identify and build on successful initiatives currently in place to ensure that parents acquire the skills needed to be successful as their child’s first teachers and focus on nationally accepted standards for parent involvement. Further, the Commission shall identify strategies to improve and increase parent involvement in pre-Kindergarten education, as well as at the Kindergarten level.

12. The Commission shall identify those special efforts and resources needed in low-income and/or rural areas of the state to ensure availability of quality early education and school readiness.

13. In order to carry out its work, the Commission shall meet no fewer than six times per year and shall strive to include all

Executive Orders

interested members of the public, along with early education and school readiness advocacy groups, in its deliberations.

14. The Commission shall issue a report on its initial work to the Governor and the Superintendent of Public Instruction no later than December 31, 2004 and thereafter on an annual basis. The reports of the Commission shall be a public record.

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 11th day of May 2004.

Joseph E. Kernan
Governor of Indiana

SEAL

ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA EXECUTIVE DEPARTMENT INDIANAPOLIS

EXECUTIVE ORDER: 04-14

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, ROSA MARIE BELL MOLLETT, was convicted in Washington County Circuit Court on March 23, 1995, for the offense of Dealing in Marijuana. She received 1 year suspended 353 days, 12 days executed and placed on probation for 353 days, enrolled in alcohol and drug user program, \$250 not to exceed \$500, \$300 eradication fee, \$50 Drug Investigation Fund, received Time Served, 12 days credit and 6 days. Probation was completed successfully; and

WHEREAS, the petitioner is currently a student at Somerset Community College pursuing a career in radiography. She has achieved several honors, certificates and scholarships while at Somerset Community College.

WHEREAS, the petitioner has numerous letters of support from friends, employer, students and professors who have found her to be honest, loyal, dependable, hard working in her employment and studies; and

WHEREAS, the petitioner requests a pardon, as "I have been a totally different person. I am a well-respected member of my community and very honest, hard-working, law-abiding citizen. I am in college trying to be accepted into the radiography program. I have many honors and will likely pursue a bachelor's degree. A pardon will help open doors that are otherwise closed."

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 ROSA MARIE BELL MOLLETT.

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 12th day of May, 2004.

Joseph E. Kernan
Governor of Indiana

SEAL

ATTEST: Todd Rokita
Secretary of State

**STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS**

EXECUTIVE ORDER: 04-15

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, IVRY J. HOBBS was convicted in Lake County Superior Court on October 19, 1992, for the offense of Possession of Cocaine. He was sentenced to a term of 18 months to the Department of Correction, 18 months probation, 30 days to be served in the Lake County Jail, to be served on 15 consecutive weekends.

WHEREAS, the petitioner has been a teacher in the Chicago school system and is currently a principal. He has a number of community interests including the mentoring of young men in an organization called Boys to Men with the Carter Temple Church. Petitioner received an Honorable Discharge from the United States Army; and

WHEREAS, the petitioner has numerous letters of support from friends and associates stating he is a man of integrity, a leader of dignity and an outstanding individual; and

WHEREAS, the petitioner requests a pardon, "I have led a law-abiding life. I have been employed in the Chicago School System for the past 29 years. I would like a pardon as I believe it would demonstrate to my superiors, family and friends that I have been completely rehabilitated and forgiven by the State of Indiana for my regrettable indiscretion of almost 16 years ago. I humbly request that I be given a second chance and an opportunity to make colleagues, family and friends proud of me."

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 IVRY J. HOBBS.

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 12th day of May, 2004.

Joseph E. Kernan
Governor of Indiana

SEAL

ATTEST: Todd Rokita
Secretary of State

INDIANA DEPARTMENT OF INSURANCE**Bulletin 125****May 21, 2004****Instructions for Product Filings**

This Bulletin is directed to all insurers, health maintenance organizations, risk retention groups, reciprocals, rating organizations, associations and all other entities making product filings with the Indiana Department of Insurance.

Effective July 1, 2004, Department of Insurance Bulletin 83 is withdrawn.

All entities making product filings with the Indiana Department of Insurance should refer to the rate and form filing instructions on the Department website, www.state.in.gov/idoi.

INDIANA DEPARTMENT OF INSURANCESally McCarty, Commissioner

INDIANA DEPARTMENT OF INSURANCE**June 7, 2004****Bulletin 126****Applications for Personal Lines Coverage
By Returning Members of the Armed Services**

This Bulletin is directed to all insurers writing automobile and homeowners' insurance in the State of Indiana.

Indiana Code § 27-1-22-26 is designed to protect individuals who are currently serving or have served in the armed forces during the six (6) months preceding an application for automobile insurance. This section of the insurance code prohibits insurers from setting the premium rate for a policy of motor vehicle insurance at an amount higher than the applicable rate set forth in the rating plan due to the fact that the individual has not been covered by motor vehicle insurance for a period of time. A violation of this section is an unfair and deceptive act or practice in the business of insurance under Indiana Code § 27-4-1-4.

Some members of the armed services have discontinued automobile insurance coverage in Indiana while on active duty overseas. This bulletin is to remind insurers of the requirement set forth in the statute and to caution insurers against penalizing returning members of the armed services for an interruption in coverage due to their military service.

If a returning service member who was a policyholder in good standing has had an interruption in automobile insurance coverage due to active military service, insurers should reinstate those policies as if there had been continuous coverage during the period of military service. Likewise, if the returning service member wishes to purchase a policy with a new insurer, the new insurer should treat the applying service member as if there had been continuous coverage during – and six (6) months following – a period of active military service.

The Department would like to see homeowners' insurers extend the same courtesies to their policyholders who are members of the armed services.

INDIANA DEPARTMENT OF INSURANCESally McCarty, Commissioner

NATURAL RESOURCES COMMISSION**Information Bulletin #28 (First Amendment)****Easements on Department of Natural Resources Properties and Navigable Waters****I. Application and Purpose of Information Bulletin**

(A) The department of natural resources owns properties throughout Indiana. The properties serve a variety of natural, cultural, economic, and recreational purposes. Missions of divisions within the department vary according to their statutory responsibilities. For example, a state forest may offer many of the same opportunities as a state park, but management on these two types of properties must also properly reflect differing priorities in the purposes they serve. Included among them are navigable waters that the state holds in trust for its citizens and for which the department has general charge.

(B) One management challenge faced by every type of department property is how properly to address easements. New or expanded easements are sought. Properties are acquired where easements were established before acquisition. Existing easements are modified or abandoned.

(C) In general, an easement is a right of use over the property of another. This information bulletin is directed to the right of use of another person over the property of the department (as opposed to an easement the department may enjoy over the property

of another). The term “easement” should be broadly construed to give liberal application to this information bulletin. As a result, the guidance may reasonably be applied to rights-of-way, licenses for the use of department lands, and similar interests. The information bulletin is intended to apply only to the department’s proprietary functions with respect to these lands, however, and not to its regulatory functions. In other words, this information bulletin should not be viewed as providing guidance with respect to any licensing function, sanction, or other order that is subject to review under the administrative orders and procedures act (IC 4-21.5).

The purpose of the information bulletin is to set guidance for the management of easements on properties owned by the department, including navigable waters. The emphasis is upon requests for new or expanded easements, and what employees of the department should consider in making recommendations pertaining to those requests. Consideration is also given to the management of existing easements and to their modification or abandonment. In seeking to achieve the purpose of this information bulletin, the overall responsibilities of the department, as well as the unique missions of its divisions, provide a backdrop. An effort is also made to incorporate policies previously adopted by the natural resources commission relative to the management of easements.

II. History of Easement Policies Adopted by the Commission

(A) One of the major functions of the natural resources commission is to assist in implementing uniform policies with respect to natural and cultural resources. Important elements of this function are to provide policy guidance and to participate in management of properties owned or leased through the department of natural resources. In performing this function, the commission has previously adopted policy statements concerning the management of easements on department of properties.

(B) A notable statement by the commission was made in November 1966 with respect to utility lines. This statement suggested four basic principles:

1. The commission has authority, under proper circumstances, to approve the construction of utility transmission facilities on department properties and to approve the grant of an easement for their maintenance.
2. To the extent practicable, the placement of utility transmission facilities should use established corridors to accomplish the following purposes:
 - (A) reduce the area of land required;
 - (B) lessen the adverse impact upon the aesthetic qualities of the land; and
 - (C) minimize physical damage to the land.
3. Reasonable fees and charges should accompany the approval of a utility easement, but fees and charges should be waived where the utility transmission facilities are being placed for the convenience of the department.
4. An easement should include a provision specifying that a utility is responsible for costs and damages if utility transmission facilities are later moved.

(C) In March 1971, the commission adopted a policy concerning parcels in private ownership that were landlocked as a result of public land acquisition for Monroe Lake. Although the terms of this policy are largely peculiar to the site, and beyond the scope of this information bulletin, three basic principles were also suggested by the policy:

1. The department should consider providing access to a person, who is landlocked as a result of acquisitions by a governmental entity, where the department is or later becomes responsible for land management.
2. The access should be developed so as not to conflict with any specialized use of the property designated by the department and so as to minimize the impact on aesthetic values.
3. Where the federal government has a special relationship to the land, resulting from its status as the lessor or as a condition of providing funding for property acquisition, the relationship must be considered in evaluating any request for an easement.

III. Policy Statement Regarding Easements on Department Properties

Lands managed by the department are held for the benefit of all the people of Indiana. The lands were ordinarily purchased with public funds or obtained through donations from citizens whose explicit or implicit desire was to enhance public enjoyment and education. The placement of easements makes land management more complex and more expensive. Facilities developed in association with easements reduce the natural, cultural, aesthetic, economic, and recreational values of these public lands. New or expanded easements are discouraged. Existing easements should be managed to minimize their adverse impacts. If the purpose for which an easement was approved no longer exists, the department should actively seek its formal termination.

IV. Process for Review of Requests for New or Expanded Easements

(A) Utilities and other interested persons periodically request new or expanded easements on properties owned by the department, including navigable waters. Even though new or expanded easements are generally discouraged, there are circumstances where approval is supportable. A person requesting an easement is responsible for providing information needed to fully evaluate and execute documentation to memorialize the easement. Examples of this information may include test results, natural or cultural resource reports, environmental assessments or environmental impact statements, fiscal analyses, real estate surveys, the preparation of documents appropriate for recordation, and any other documentation found necessary or appropriate by the department for the type of easement sought.

(B) Where a request for a new or expanded easement is received, employees of the department will prepare a report, for

consideration by the commission, recommending approval or denial. The division primarily responsible for managing the subject property, acting in consultation with the division of land acquisition and the department's legal section, provides the report. If the recommendation is for approval, the report should also describe conditions to accompany the easement.

(C) In determining whether to recommend approval or denial of an easement request, the following factors are considered:

1. Whether legal restrictions apply to the site that would make granting an easement illegal or impracticable. Example: The articles of dedication for a nature preserve, dedicated under IC 14-31-1, prohibit development of the type anticipated by the easement.
2. Whether resources might be particularly sensitive to disturbance. Examples: (A) The activity anticipated by the easement would damage a mussel bed. (B) The activity anticipated by the easement would likely threaten a population of animals or plants that are listed by the state or federal government as being threatened or endangered.
3. Whether other reasonable alternatives exist for the placement of the easement. Example: The easement could be located along an adjacent roadway rather than extended through a state forest, even though use of the roadway might provide a more circuitous route.
4. Whether denial of the easement would result in an unusual hardship to the applicant. Example: A rural utility cannot finance the placement of a line to serve private homeowners with potable water if the line must be made to circumvent a department property.
5. Whether the department will receive a benefit from development of the easement. Example: The easement will allow the location of a sanitary sewer to transport wastes, generated within a reservoir property, for processing by a municipal treatment plant.
6. Whether a legal obligation mandates the department to grant or modify an easement. Example: The terms of a deed granting title to the state or to the department require an easement be maintained in favor of a third party.

(D) If the division determines to recommend approval of a request for a new or expanded easement, the following factors are considered in determining conditions to include in the easement:

1. What are the best management practices to minimize the disturbance caused by any construction activities authorized by the easement. These practices should consider natural, cultural, economic, and recreational benefits that are derived from the land. Example: Erosion control techniques should be applied that are effective and compatible with site usage.
2. What are the best management practices to minimize future disturbance caused by maintenance activities for any use authorized by the easement. These practices should consider natural, cultural, economic, and recreational benefits that are reasonably foreseeable. Example: Maintenance of an easement should not conflict with uses anticipated for a state park according to its approved master plan.
3. Whether all legal requirements are met before an easement is granted. Example: The department's division of historic preservation and archeology has located each historic site or historic structure on the proposed easement. If the activity anticipated by the easement requires the alteration of an historic site or historic structure, the easement is conditioned upon approval for the alteration being received from the historic preservation review board before the alteration begins.
4. Whether all legal requirements are met with respect to the activity authorized by the easement. Example: The easement is conditioned upon approval for any construction activities within a floodway for which a permit from the department is required.
5. Whether the easement is described with sufficient particularity to support a clear understanding by current and future department employees, and by the person who holds the easement, of its application and limitations. Example: A plat and description suitable for recordation may be required.
6. Whether an easement is written as narrowly as is practicable to serve its stated purpose. Limitations on time, space, and beneficiaries are recommended. Examples: (A) With respect to time, where the person seeking the easement holds a life estate on land to which the department holds the remainder, the department would ordinarily grant the easement in gross. Also, an easement may be described to cover a limited duration. An easement shall be no longer than required to serve the intended purpose. Generally, the term shall not exceed 40 years. (B) With respect to space, the areas to be disturbed during construction activities are described in the easement to include no more than what is reasonably required for construction. (C) With respect to beneficiaries, the department would ordinarily grant an easement so as to prohibit the recipient from transferring the easement to another, granting use of the easement to another, or burdening the easement with a purpose other than specified in the easement. The department would reserve the right to grant an easement to another person or persons to use the same corridor. The easement would provide for the reversion of rights to the department if the recipient exceeded a limitation in, or otherwise violated the terms of, the easement.
7. Whether the amount of consideration for the easement has been determined to reasonably assure the department receives fair market value. In determining fair market value, the department shall consider economic factors as well as compensation for loss to natural and cultural resources caused by the construction and maintenance of the easement. The department may compare formulae and methodologies used for determining compensation for similar easements. The amount of compensation may be adjusted where a beneficiary of the easement is the state or a local governmental entity. A minimum fee of \$500 is

established for an easement, although the fee does not apply if the sole beneficiary of the easement is the department. To assist in determining fair market value, reference may be made to the Standard Compensation Schedule in Part V of this Information Bulletin. Example: The department may require an applicant, for an easement to place fiber optics cable, to disclose the amount and terms of compensation the applicant provided for an easement to place fiber optics cable at other locations.

8. Whether every reasonable effort has been made to place a new easement within an existing utility corridor. Example: The department can require an easement to be located in a way that is less convenient and more costly to the person seeking the easement where an existing utility corridor could be used.

9. When there are particular legal requirements that must be met before the department determines to recommend approval, denial, or conditioning of an easement request, whether these requirements have been met. Example: The department shall review any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is filed, taking into account the nature and scope of the request. Any decision by the department to deny a request of this nature shall be in writing and supported by substantial evidence contained in a written record. An affected person may take administrative review and judicial review of a determination of this type, and the commission shall not act upon the easement until the review is final.

V. Standard Compensation Schedule

1. A standard easement fee is established for utilities for each linear foot as follows:

MAXIMUM EASEMENT WIDTH IN FEET	RATE PER FOOT
10	\$2
15	\$3
20	\$4
30	\$6
40	\$8
50	\$10
100	\$20
200	\$40

A width between the stated widths is assessed at the higher rate.

2. The standard fee for temporary right-of-way for construction is 50% of the rate per foot established in part 1.

3. The rates per lineal foot established in part 1 may be reduced by 15% for each of the following conditions that are met:

- (a) A utility provides local service and the department is among those that are served.
- (b) A utility stays within an existing easement corridor or existing roadway berms.
- (c) A utility is not-for-profit and the line is for end-of-service distribution.
- (d) Structures associated with the easement are buried.

4. The rates per lineal foot established in part 1 may be increased to 200% of the stated rate if construction begins without obtaining prior authorization from the department.

5. The standard fee for a utility cabinet or similar structure not exceeding a footprint of 400 square feet of cleared ground is \$5,000.

6. The standard fee for a utility cabinet or similar structure, with a footprint exceeding 400 square feet of cleared ground, is \$5,000 plus \$10 per square foot of cleared ground exceeding 400 square feet.

7. A standard easement fee schedule is established for roadways as follows:

- (a) For a roadway serving a single parcel, twice the rates established in part 1.
- (b) For a roadway serving more than one but fewer than eight parcels, the same rate per parcel owner as established in part 1.
- (c) For a roadway serving at least eight parcels, 60% of the rate per parcel owner as established in part 1.
- (d) The rates established in this part may be increased to 200% of the stated rate if construction begins without obtaining prior authorization from the department.
- (e) The department may also apply this schedule to easements for purposes other than roads, but it does not apply to utility easements.

VI. Rights of Entry

The director is authorized to approve a right of entry to conduct surveys or collect data in preparation for making an easement request. The right of entry may be conditioned as determined appropriate by the department to minimize damage to natural or cultural resources and to provide for public safety and convenience. Grant of a right of entry does not constitute or imply approval of the easement.

VII. Utility Line Crossings Beneath Navigable Waters

An easement is not required for a utility line crossing that meets each of the following requirements:

- 1. The utility line is placed entirely beneath the bed of a navigable waterway.

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2. The department does not own the property on either side of the navigable waterway.
3. The utility line qualifies for a general license under 312 IAC 10-5.
4. The waterway is not a lake.
5. The crossing forms a straight line and is at an angle of between 45 degrees and 135 degrees from the shoreline.

If a person elects to place a utility crossing under this section, no property interest or right is established in favor of the person.

VIII. Emergency Construction Approvals

The director of the department and the commission chair are authorized to approve emergency construction activities in association with an existing or proposed easement where consideration of the approval during a regular meeting of the commission is impracticable. Following consultation by the director and the chair, correspondence showing the signature of either of them is sufficient to memorialize an emergency construction approval. An emergency construction approval does not constitute or imply approval of the easement. A person seeking an easement must yet request and obtain approval of the easement from the commission. If approval of the easement is not obtained, the person performing the emergency construction can be required to restore the site as nearly as practicable to its condition before construction.

IX. Effective Date and History of Information Bulletin

This information bulletin was approved by the commission during its regular monthly meeting of April 18, 2000 and became effective June 1, 2000. On the effective date, the bulletin was published in the Indiana Register at 23 IR 2327. The First Amendment was made by the commission during its regular monthly meeting of May 18, 2004 and became effective July 1, 2004.

LAND USE EASEMENT SUMMARY

State	ILLINOIS	KENTUCKY	MICHIGAN	OHIO
Land Use Instrument	License	License	Easement Deed	License
Types of Land Use	Utilities, access roads	Utilities, access roads	Utilities, access roads	Utilities, access roads
Term of Instrument	5-year renewable, or non-expiring	One year or specified; Renewable	Specified or indefinite	25 years; Renewable
Assignment of Instrument	Not specified	Non-transferable without written consent	Transferable only with written approval	Transferable only with consent
Reversion of Rights	Revokable	May terminate at any time; Access road – terminate upon transfer of property	Reverts when the use need ceases	Reverts at expiration of license
Restrictions on Access Roads		No multiple landowners over one access road – seek county adoption of road if needed	Allows multiple owners on access roads	Only licenses one owner for access road to limit development
Application Review Fee	None	None	\$300 up to ¼ mile; \$150 for each additional mile beyond ¼ mile	None
Annual Fee	Based on State formula tied to Consumer Price Index	Based on Forest Service fees or method determined as fair	None	None
One Time Fee	An option in place of annual fee	\$100	See fee schedule below	\$1,200
Other Compensation	None	None	Tree value lost of three rotations from that site	Value of trees removed
Other		Requires liability insurance for commercial utilities; Reduces or waives fees for non-profit utilities and end-of-line utilities	All utility lines will be buried whenever feasible	Fee is split between Landholding Division (\$1000) and Real Estate Division (\$200)

Michigan Utility Easement Fee per Linear Foot of Right-Of-Way

Right-of-way width Up to (feet)	Upper Peninsula	Northern Lower Peninsula	Southern Lower Peninsula
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10	\$0.60	\$1.05	\$1.50
15	\$0.90	\$1.60	\$2.25
20	\$1.20	\$2.10	\$3.00
30	\$1.80	\$3.15	\$4.50
40	\$2.40	\$4.20	\$6.00
50	\$3.00	\$5.25	\$7.50
100	\$6.00	\$10.50	\$15.00
Temporary right-of-way for short term construction			Above schedule x 50%
Utility cabinet sites up to 20 feet by 20 feet			\$4,500

Appraisals may be used when the fee schedule would result in a charge less than the value of the rights conveyed. There is a minimum charge of \$500 if the fee schedule would indicate less than that amount. All utility lines shall be buried whenever feasible. Where easements for above-ground utilities are approved, the charge will be 200% of the above schedule.

Michigan Private Road Easement Fee Schedule

Easement – single (minimum - \$1,000)	Twice the rate of the Utility Fee Schedule Above
2 – 7 parcels sharing road; per parcel (easement)	The same rate as the Utility Fee Schedule Above per parcel owner (easement)
More than 7 parcels sharing road, per parcel (easement)	Sixty percent (60%) of the rate of the Utility Fee Schedule Above

NATURAL RESOURCES COMMISSION Information Bulletin #36 (Second Amendment) Effective July 1, 2004

Subject: Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33).

1. History

The development of conservancy districts is an increasingly active option for addressing a variety of land use issues at the local level. Freeholders within contiguous geographic areas may use a conservancy district to achieve a dependable drinking water supply, to provide for sewage collection and treatment, to improve flood control, to reduce soil erosion, or to achieve any of numerous other water-resource community goals, either singly or in combination. IC 14-33-1-1.

The determination whether to approve the establishment of a conservancy district and the primary responsibility for the oversight of an existing conservancy district rest with a circuit court where the district is located. IC 14-33-2-26. Management of the district itself is under the control of a board of directors, selected initially by the county commissioners and subsequently by the freeholders of the district. IC 14-33-5-11.

Important roles are also served by the natural resources commission at six crucial stages in the formation, management, and dissolution of conservancy districts. At two of the stages, hearings for public input are required. At the other four, hearings may be requested. These stages also provide the primary forums for the receipt and evaluation of scientific and technical data upon which the court adjudicates and the board manages. In the receipt and evaluation of technical data, the commission brings together reports and analyses of the department of natural resources, acting primarily through the division of water, and other state and local agencies. Most common among these are the department of environmental management, state department of health, and utility regulatory commission.

In 1996, a comprehensive commission policy was established for procedural functions relating to the formation and development of conservancy districts. [Information Bulletin #12, 19 IR 2801, superseded]. Four developments were identified by the commission in support of the policy:

First, the absence of a policy led to public uncertainty and discomfort, particularly among persons who oppose the formation of a conservancy district or who oppose the development of a project within an existing conservancy district. Concerns had been expressed that the conservancy district process should be re-evaluated to assure all citizens within the boundaries of a proposed or existing district would have meaningful access to the hearing processes.

Second, the complexity of the economic and environmental issues supported the need for a consistent policy. Not the least of these issues were the regulatory functions of the state agencies and their coordination with local governmental entities bearing upon the functions of conservancy districts.

Third, the natural resources commission and the department of natural resources had experienced a statutory evolution regarding hearing processes that had not yet been accommodated for conservancy district hearings. Most noteworthy was the development of the administrative orders and procedures act (IC 4-21.5) and the "sunset review" process for these agencies that resulted in 1990 and 1991 legislation.

The fourth development was the recodification of natural resources laws set forth in P.L.1-1995. The recodification resolved a statutory ambiguity relative to adding territory to conservancy districts. Compare IC 13-3-3-6(a) as recodified at IC 14-33-4-2(b). In part to address the ambiguity, the commission implemented Information Bulletin #6, published at 17 IR 1836 (April 1, 1994). With the recodification, Information Bulletin #6 was reconsidered and amended.

In response to these developments, Information Bulletin #12 provided guidelines for implementation of conservancy districts processes, where those processes were within the jurisdiction of the natural resources commission. A flexible guidance was designed to help the commission fully and fairly review pertinent issues. Responsibilities were identified and delegated to the commission's division of hearings, and to the department of natural resources, so as to foster better coordination among these and other pertinent agencies.

The primary purposes of Information Bulletin #36 are as follows: (1) refinement of the purposes previously addressed in Information Bulletin #12; (2) integration of the "contiguousness" analysis contained in Information Bulletin #6; (3) clarification of agency treatment of initiatives to add a purpose to an existing district; (4) inclusion of standards for determining whether a district qualifies for the purpose of flood prevention and control; and, (5) consideration of conservancy district elections.

The six crucial stages in which the commission serves are considered separately. These stages are as follows:

- (1) consideration of technical issues prior to formation of a district;
- (2) development of a district plan;
- (3) development of a unit of work;
- (4) addition of territory to an existing district;
- (5) addition of a purpose to an existing district; and,
- (6) dissolution of a district.

The natural resources commission on September 16, 2003 approved amendments to this information bulletin, for additions to conservancy districts in Hendricks County. These amendments were published in the Indiana Register and became effective on November 1, 2003. In 2004, the Indiana general assembly amended IC 14-33-4-2 by deleting the extraordinary requirements for Hendricks County. The legislation became effective July 1, 2004, and the information bulletin has been amended, consistently with the legislation, to remove these 2003 amendments.

2. Consideration of Technical Issues Prior to Formation of a District

A. Petition Referral

As provided in IC 14-33-2-17(b), after a court determines a petition to create a district is in proper form and bears the needed signatures, the petition is referred to the natural resources commission for a technical review. The issues for review are set forth in subsection (c) and include whether:

- (1) the proposed district appears to be necessary;
- (2) the proposed district holds promise of economic and engineering feasibility;
- (3) the proposed district seems to offer benefits in excess of costs and damages (or, for water supply, sewage disposal, or water storage, whether the public health will be served);
- (4) the proposed district proposes to cover and serve a proper area; and,
- (5) the proposed district could be established in a manner compatible with similar governmental entities.

At least one public hearing is mandatory. An interested person has "the right to be heard. At the request of an interested person, the commission shall hold hearings at the county seat of a county containing land in the proposed district." IC 14-33-2-19(a). Notice of the hearing must be published in a "newspaper of general circulation in each county containing land in the proposed district." IC 14-33-2-19(b). The commission is also required to incorporate technical assistance from any state and local agency that might have jurisdiction over the subject-matter of the proposed district.

The information received at public hearing and from the agencies is incorporated in a factfinding report to the commission from its hearing officer. The factfinding report of the commission on the proposed district is prima facie evidence of the facts in all subsequent proceedings. IC 14-33-2-23. After receipt of the report from the commission, the court sets another hearing at which an opportunity for additional evidence is provided. IC 14-33-2-25.

Of the six stages under consideration, the initial stage has traditionally been the one most likely to evoke controversy. The petitioner is always represented by an attorney. Where there is a formal remonstrance to a proposed district, the remonstrants are likely to have legal representation. Attorneys participating in the process at this stage, most notably those representing remonstrants, have sometimes urged the full application of the administrative orders and procedures act. Key elements of that act are that all testimony must be given under oath, there is an opportunity for the cross-examination of witnesses, and there is a prohibition on substantive ex parte communications between a party and the administrative law judge (or, if applied to conservancy districts, the

hearing officer).

The administrative orders and procedures act does not appear to have direct application to the commission's role prior to formation of a district. Most notably, the act applies generally to agency "orders". The commission issues not an order but a factfinding report that the circuit court then utilizes as prima facie evidence. The court itself issues the order whether or not to create a conservancy district and does so only following a judicial hearing held after receipt of the commission's factfinding report. In addition, the application of the relatively formal processes of the administrative orders and procedures act appear unwieldy in relation to the informal public hearings before the commission's hearing officer; often these public hearings are attended by hundreds of participating citizens. Application of the administrative orders and procedures act may have a chilling effect upon public comment and inquiry at this preliminary stage. Finally, before the hearing date the hearing officer typically is only vaguely informed, if informed at all, of the identity of any remonstrants. The concept of party status is not generally well-defined at this stage, casting uncertainty on application of the prohibition against substantive ex parte communications.

On the other hand, fairness requires the full participation by remonstrants and by citizens seeking additional information, as well as by the petitioners, in this stage of the process. The development of a complete factfinding report is also supported by full participation by all citizens, particularly the freeholders to a proposed district. The process should be conducted in a manner which both is and has the appearance of being impartial. To these ends, the following guidelines are established:

- (1) Referrals by a court for the technical review anticipated by IC 14-33-2-17(b) are directed to the following address:

Division of Hearings
Natural Resources Commission
Indiana Government Center South
402 West Washington Street, Room W272
Indianapolis, IN 46204-2739

- (2) As soon as practicable after the receipt of the referral, the director of the division of hearings appoints a hearing officer. The hearing officer conducts actions appropriate to the preparation and submission to the commission of a recommended factfinding report. Included among these actions are the following:

(A) The hearing officer promptly provides a copy of the referral to the division of water of the department of natural resources, the department of environmental management, the state department of health, the utility regulatory commission, and any other agency determined by the hearing officer to have jurisdiction over the subject-matter of the referral. Accompanied by the referral is an invitation for comment as well as the address and telephone number of a contact person within the division of water. The address for the contact person is as follows:

Division of Water-Project Development
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

(B) The hearing officer confers with the court or the clerk of the court to determine, if in addition to the petitioners, a remonstrant or other party has entered an appearance as a party to the civil proceeding.

(C) The hearing officer forwards a copy of this nonrule policy document to each of the parties. Also included are the name, address, and telephone number of the contact person within the division of water who will coordinate technical reviews.

(D) If parties other than the petitioners have entered an appearance, the hearing officer promptly sets an informal conference of the parties. An invitation to participate is also made to division of water. During the informal conference, the hearing officer will attempt to develop a consensus for the conduct of the public hearing. If a consensus cannot be developed, the hearing officer determines the conduct of the hearing in accordance with the following principles:

1. A hearing is held in the county seat of a county containing land in the proposed district.
2. The process is conducted in the most informal manner practicable that also supports fairness and meaningful public participation.
3. If issues in dispute are identified during the informal conference which require expert testimony, or for which the hearing officer otherwise determines testimony should be under oath, a second hearing may be conducted. An opportunity for cross-examination shall be provided, the hearing recorded by a court stenographer or reporter approved by the commission, and the trial rules of discovery applied. The hearing officer provides written notice to the parties of any second hearing and also announces the time, date, and location of the second hearing during the initial public hearing. Unless otherwise agreed by the parties, the hearing officer makes every reasonable effort to conduct the second hearing so that a delay is not required in the submission of a recommended factfinding report to the commission.

(E) The hearing officer drafts and tenders to the commission a recommended factfinding report. A copy of the report is

forwarded to each party, to the division of water, to any agency that commented upon the proposed conservancy district, and to any other person requesting a copy. The hearing officer encloses with the report a notice of the time, date, and location when the commission is scheduled to act upon the recommended factfinding report.

(F) Following action by the commission, the hearing officer causes a copy of the factfinding report of the commission to be filed with the court and served upon the division of water, the parties, and any other person requesting a copy.

B. ‘Contiguosness’ of District Boundaries

As part of the factfinding report, the commission is required to determine and communicate to the court whether a proposed district would “cover and serve a proper area.” IC 14-33-2-17(c)(5). Also, as provided in IC 14-33-2-22, the factfinding report must include “findings on the territorial limits of the proposed district.”

Factors for determining appropriate district boundaries are set forth in IC 14-33-3-1. Among these factors is a requirement that “each part of the district is contiguous to another part.” The statutory requirement of contiguosness forms an important element to the geographic requirements of the conservancy district chapter.

If lengthy but narrow boundaries are created to incorporate outlying areas into a district, problems could be posed to adjacent areas, particularly if residents of these areas are not allowed to enter the district. The establishment of a district with exclusive boundaries may hinder attempts by the residents to form a new district. These problems may be acute where a purpose of the district is to provide water supply or sewage disposal.

To establish a consistent and viable framework for determining what is “contiguous” within IC 14-33-3-1, the commission will apply the following:

As used in IC 14-33-3-1, “contiguous” will ordinarily be applied to require that each part of the district adjoin every other part. The requirement is not met where a district boundary is excessively long and narrow. What is excessively long and narrow will be evaluated on an individual basis and will more likely be a major concern for districts that would provide sewage disposal or water supply than for districts which would provide other services. Where the district would provide flood prevention and control, contiguosness will be applied to encourage a coordinated effort within a particular watershed.

An easement or other written license granted by the fee title holder to the district or proposed district may establish contiguosness. Where the district is to provide sewage treatment or water supply, freeholders must typically be provided an opportunity to connect to an adjacent line or to enter the district. As used in this paragraph, an “adjacent line” is one that is either (1) used to carry sewage and located within 300 feet of the freeholder’s building; or (2) used to carry water supply and located on an easement or license that adjoins the freeholder’s property. A petitioner must provide the division of water a copy of an easement or other written license that is used to establish contiguosness.

C. Review Standards for Purpose of Flood Prevention and Control

One purpose for which a conservancy district can be established is flood prevention and control. IC 14-33-1-1(a)(1). In order to receive a favorable determination by the commission under IC 14-33-2-17 for the purpose of flood prevention and control, the petitioners must show the district would accomplish at least one of the following functions:

- (1) The removal of obstructions and accumulated debris from a waterway channel.
- (2) The cleaning or straightening of a channel.
- (3) The development of a new and enlarged channel.
- (4) The construction or repair of dikes, levees, or other flood protective works.
- (5) The construction of waterway bank protection.
- (6) The establishment of a floodway.

All works for the purpose of flood prevention and control must be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable that complies with IC 14-28-1-29.

3. Development of a District Plan

Following the creation of a conservancy district by the circuit court, the district is required to establish a “district plan.” As provided in IC 14-33-6-2, a “district plan consists of an engineering report that sets forth the general, comprehensive plan for the accomplishment of each purpose for which the district was established.” The district plan includes physical and technical descriptions, maps, preliminary drawings, cost estimates based upon preliminary engineering surveys and studies, copies of agreements with other governmental entities, and works of improvement.

The board of directors is required to submit a district plan to the commission for its approval within 120 days after the appointment of the board members, unless a time extension is obtained from the commission. IC 14-13-6-3. “The commission may reject a plan or any part of a plan.” IC 14-13-6-4(d). “After receiving the approval of the commission, the board shall file the district plan with the court.” IC 14-13-6-5(a). Following the filing by the board of directors, the court sets the district plan for a hearing. IC 14-13-6-5(b).

The conservancy district statutory article does not address review of the “approval” process at the state agency level, but administrative reviews are addressed generally in IC 4-21.5 (“administrative orders and procedures act” or “AOPA”). Licenses are governed by AOPA, and included within the definition of “license” is any “approval” required by law. IC 4-21.5-1-8. The term

“license” is also defined in the statutory chapter governing the relationship of the natural resources commission and the department of natural resources to include an “approval” that may be issued by the department under Indiana law. IC 14-11-3-1(a).

Significant to the inclusion of “approval” within the definition of license contained in IC 14-11-3-1(a) is that “[n]otwithstanding any other law, the director shall issue all licenses.” IC 14-11-3-1(b). A designee may act for the director in license issuance, but the designee must be a “full-time employee of the department” of natural resources. IC 14-11-3-1(c). The commission then acts as the “ultimate authority” for license determinations by the director or his designee. IC 14-10-2-3. “Ultimate authority” is defined in AOPA to mean the entity “in whom the final authority for an agency is vested by law.” IC 4-21.5-1-15.

With this background, the following guidelines are established:

- (1) The board of directors of a district submits any proposal for or pertaining to a district plan to the department’s division of water.
- (2) The division of water assists the board in identifying licenses likely to be required to implement the district plan. The division of water also coordinates with the department of environmental management and the state department of health concerning any comments pertaining to the development of a district plan.
- (3) The division of water reviews and evaluates comments and alternative proposals to the district plan that may be submitted by other interested persons. The division of water shall consider only technical, engineering, and scientific issues necessary to the development of the district plan. The division may use facilitation or mediation to help resolve any conflict.
- (4) The director of the division of water approves or disapproves the district plan. Notice of the agency action and the opportunity to seek administrative review under AOPA is provided to the board of directors and to any other person requesting a copy of the notice. The director of the division of water also acts upon any request to extend the time to file a district plan, and the same notification process applies. The division director shall encourage the board to file completed applications for any necessary license as soon as practicable after approval of a district plan.
- (5) The commission’s division of hearings conducts any administrative review sought under part (4). The commission is the ultimate authority for the department of natural resources under AOPA. Following the completion of administrative review, the division of hearings notifies the parties of the completion and that review of the commission order is subject to further action by the circuit court pursuant to IC 14-13-6-5(b).

4. Development of a Unit of Work

To implement a district plan, the board of directors of a conservancy district “shall order the preparation of the detailed construction drawings, specifications, and refined cost estimates.... The implementation may involve all or part of the works of improvement if the part constitutes a unit that:

- (1) can be constructed and operated as a feasible unit alone; and
- (2) can be operated economically in conjunction with other proposed works set forth in the district plan.” IC 14-33-6-8(a). “When the drawings, specifications, and cost estimates have been prepared to the satisfaction of the board [of directors], the board shall by resolution tentatively adopt and submit the drawings, specifications, and cost estimates to the commission for approval.” IC 14-33-6-8(b). “Upon the receipt of the written approval,” the board provides a “hearing on the drawings, specifications, and cost estimates at which any interested person must be heard.” IC 14-33-6-9.

The process of the development of a unit of work is similar to that for the preparation of a district plan. An important distinction is no judicial hearing follows the commission approval. Within the context of the review process, the legislature may have envisioned the hearing by the board, following commission approval of the unit of work, serves as an informational rather than judicial or quasi-judicial process.

With this background, the following guidelines are established:

- (1) The board of directors of a district submits to the division of water of the department of natural resources any proposals for or pertaining to a unit work.
- (2) The division of water assists the board in identifying licenses likely to be required to implement the district plan. The division of water also coordinates with the department of environmental management and the state department of health concerning any comments pertaining to the development of a unit of work.
- (3) The division of water reviews and gives due consideration to comments and alternative proposals to the unit of work which may be submitted by other interested persons. In performing this function, the division is limited to consideration of the design and construction of structures needed to implement the district plan. The division may use facilitation or mediation to help resolve any conflict.
- (4) The director of the division of water approves or disapproves the unit of work. Notice of the agency action and the opportunity to seek administrative review pursuant to the administrative orders and procedures act is provided to the board of directors and to any other person requesting a copy of the notice. The director of the division of water also acts upon any request to extend the time by which to file a unit of work, and the same notification process applies. The division director shall encourage the board of a conservancy district to file completed applications for any necessary license as soon as practicable after approval of a unit of work.

(5) The commission's division of hearings conducts any administrative review sought under part (4). The commission is the ultimate authority for the department of natural resources. Following the completion of administrative review under AOPA, the division of hearings notifies the parties of the final agency action by the commission and outlines the process for obtaining judicial review. Also included in the notice is reference to the informal hearing before the board of directors pursuant to IC 14-33-6-9.

5. Addition of Territory to an Existing District

Ordinarily, territory may be added to an existing district according to either of two procedures. The procedures in these two circumstances follow distinct paths and are here viewed separately:

A. Additions Initiated with the Circuit Court

Pursuant to IC 14-33-4-2(b)(1), territory may be added according to the same procedure as is provided for the establishment of a district. A petition to add territory under this subdivision will be supported by the following guidance.

After a court determines a petition to add territory to a district is in proper form and bears the needed signatures, the petition is referred to the natural resources commission for a technical review. The issues for review include whether:

1. the proposed addition appears to be necessary;
2. the proposed addition holds promise of economic and engineering feasibility;
3. the proposed addition seems to offer benefits in excess of costs and damages (or, for water supply, sewage disposal, or water storage, whether the public health will be served);
4. the proposed addition proposes to cover and serve a proper area; and,
5. the proposed addition could be implemented in a manner compatible with similar governmental entities, most notably the existing conservancy district.

At least one public hearing is mandatory. The hearing officer will be selected and conduct the hearing essentially as provided to consider the establishment of a new district. An interested person has the right to be heard. The hearing will be held at the county seat of a county containing land in the proposed district. Notice of the hearing will be published in a newspaper of general circulation in each county containing land in the district and the proposed addition. The commission hearing officer will incorporate technical assistance from a state agency having jurisdiction over the subject matter of the district and the proposed addition.

Where territory is sought to be added to an existing district, the impact upon the district is often inconsequential. An addition may be relatively minor and involve only a small area with little or no measurable affect to the freeholders within the existing district. The hearing officer will consider and, following the completion of the public hearing or hearings, report to the director of the division of water as to the likely consequence to the district of the proposed addition. The director of the division of water is delegated authority to determine when the proposed addition of territory is de minimis and when its review by the commission is unlikely to be productive. When the division director makes such a determination, the hearing officer's report is forwarded directly to the court as the commission's factfinding report. This report is to be submitted within 30 days of receipt by the division of water of a completed petition to add territory to a district.

B. Additions Initiated with the Board of Directors

As provided in IC 14-33-4-2(b)(2), an addition of territory to an existing district may also be initiated by a board resolution. The resolution follows a petition by the majority of freeholders or the municipality in the area proposed to be added. The resolution and petition are filed with the court, and the court sets the matter for hearing. Notice of the hearing is sent to the natural resources commission and to the freeholders in the district and in the area proposed to be served by the additional territory. The notice to the commission should be forwarded to the division of hearings.

Upon receipt of the notice, the division of hearings will notify the division of water of the department of natural resources and other state agencies which appear to have jurisdiction over the subject of the addition. A conservancy district board wishing to apply IC 14-33-4-2(b)(2) is urged to communicate its wish to the division of hearings as soon as practicable so that expeditious technical discussions may be pursued with the appropriate state agencies. The recommendation is that this communication occurs at least 60 days prior to the setting of a hearing under IC 14-33-4-2(d). Adequate review is essential to a favorable comment by the commission to the court. The division director of the division of water is delegated authority by the commission to report favorably, to make recommendations to modify or condition the addition of territory, or to object to the addition of territory. See particularly IC 14-33-4-2(e).

6. Addition of a Purpose to an Existing District

A purpose may be added to an existing district in either of two ways. The same procedure may be used as is provided for the establishment of a district. IC 14-33-1-4(1). If this subdivision is applied, reference should be made to the process for the addition of territory pursuant to part 5A of this nonrule policy document.

In the alternative, IC 14-33-1-4(2) provides that the conservancy district board may add a purpose based upon a petition signed by at least 10% of the freeholders of the district. If the resolution is passed, the resolution and petition are filed with the county court and the court sets the matter for hearing. The court forwards to the commission the notice of hearing along with a copy of the resolution "at least 30 days before the date of hearing." IC 14-33-1-5.

Upon receipt of the notice, the division of hearings will notify the department's division of water and other state agencies that appear to have jurisdiction over the subject of the addition. A conservancy district board wishing to apply IC 14-33-1-4(2) is urged to communicate its wish to the division of hearings as soon as practicable so that expeditious technical discussions may be pursued with the appropriate state agencies. The recommendation is this communication occur at least 60 days before setting a hearing under IC 14-33-1-5(b). Adequate review is essential to a favorable comment by the commission to the court. The division director of the division of water is delegated authority by the commission to report favorably, to make recommendations to modify or condition the addition of territory, or to object to the addition of territory. See particularly IC 14-33-1-5(e).

7. Dissolution of a District

A conservancy district may be dissolved either because the district is "no longer of benefit" (IC 14-33-15) or because "construction of works of improvement has not begun within six (6) years after the district plan." (IC 14-33-16). Where works of improvement are not begun, there is no statutory participation by the natural resources commission; no procedural issue is presented. A district dissolved due to loss of benefit applies "the same procedure used to establish a district. The petition must set forth the change of circumstances that causes the district to lose the district's benefit." IC 14-33-15-1.

Because the process is essentially the same for the dissolution as for the establishment of a conservancy district, the same analysis applies to the development of an appropriate process. With this background, the following guidelines are established:

- (1) Referrals by a court for the technical review anticipated by IC 14-33-15-1 are directed to the division of hearings.
- (2) As soon as practicable after the receipt of the referral, the director of the division of hearings appoints a hearing officer. The hearing officer conducts actions appropriate to the preparation and submission to the commission of a recommended factfinding report. Included among these actions are the following:

(A) The hearing officer promptly provides a copy of the referral to the division of water of the department of natural resources, the department of environmental management, the state department of health, the utility regulatory commission, and any other agency determined by the hearing officer to have jurisdiction over the subject-matter of the referral. Accompanied by the referral is an invitation for comment as well as the address and telephone number of a contact person within the division of water.

(B) The hearing officer confers with the court or the clerk of the court to determine, if in addition to the petitioners, a remonstrant or other party has entered an appearance as a party to the civil proceeding.

(C) The hearing officer forwards a copy of this nonrule policy document to each of the parties. Also included are the name, address, and telephone number of the contact person within the division of water.

(D) If parties other than the petitioners have entered an appearance, the hearing officer promptly sets an informal conference of the parties. An invitation to participate is also made to division of water.

During the informal conference, the hearing officer will attempt to develop a consensus for the conduct of the public hearing. If a consensus cannot be developed, the hearing officer determines the conduct of the hearing in accordance with the following principles:

- (1) A hearing is held the county seat of a county containing land in the district.
- (2) The process is conducted in the most informal manner practicable which also support fairness and meaningful public participation.
- (3) If issues in dispute are identified requiring expert testimony, or for which the hearing officer otherwise determines testimony should be under oath, a second hearing may be conducted. An opportunity for cross-examination shall be provided, the hearing recorded by a court stenographer or reporter approved by the commission, and the trial rules of discovery applied. The hearing officer announces the time, date, and location of the second hearing during the initial public hearing. Unless otherwise agreed by the parties, the hearing officer makes every reasonable effort to conduct the second hearing so that a delay is not required in the submission of a recommended factfinding report to the commission.
- (4) The hearing officer determines whether either of the following matters are in issue: (a) whether the board has failed, within two years of establishment of the conservancy district, to produce satisfactory evidence of progress in the preparation of the district plan; or, (b) whether federal or state money, or both, contemplated in the petition for the establishment of the district, appears to be unavailable. See IC 14-33-15-2.
- (E) The hearing officer drafts and tenders to the commission a recommended factfinding report. A copy of the report is forwarded to each party, to the division of water, to any agency that commented upon the conservancy district, and to any other person requesting a copy. The hearing officer encloses with the report a notice of the time, date, and location when the commission is scheduled to act upon the recommended factfinding report.
- (F) Following action by the commission, the hearing officer causes a copy of the factfinding report of the commission to be served upon the division of water, the parties, and any other person requesting a copy.

8. Election of Board of Directors and Notice to Commission

Neither the natural resources commission nor the department of natural resources have jurisdiction over board elections. The

board of commissioners of the county appoints the board of directors for the new district within twenty (20) days after a court order establishing a district. IC 14-33-5-1. A person adversely affected by an action committed or omitted by the board may petition the court having jurisdiction over the district to enjoin or mandate the board. IC. 14-33-5-24.

The board chair is required by IC 14-33-5-17 to promptly notify the commission when board members are elected or appointed. The department's division of water maintains a database of conservancy districts and board members. By this Information Bulletin, the commission identifies the following address for the notice required by IC 14-33-5-17:

Division of Water-Project Development
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

Service at this address will also help assure the division of water's database is current. For more information see http://www.IN.gov/dnr/water/publications/pdf/con_dist_dir.pdf.

9. Application and Modification

This information bulletin is intended to be liberally construed in order to support efficient administration by the natural resources commission, acting in cooperation with other agencies, of its conservancy district responsibilities. Modifications to the document may be needed based upon experience or legislative changes. Suggestions for modification of the document are welcomed from the public and should be forwarded to the division of hearings at the address set forth previously. Send any suggestions to the address for the division of hearings shown above or by email to slucas@nrc.IN.gov.

NATURAL RESOURCES COMMISSION

Information Bulletin #44

Effective July 1, 2004

List of Beneficial Organisms Exempted from Licensure

Purpose: This information bulletin assists primarily in the administration of 312 IAC 18-3-15. The information bulletin may also be cross-referenced and incorporated by reference into other rules or documents.

A beneficial organism listed here is exempted from licensure under 312 IAC 18-3-15(d) or may be released under a general license. Unless the terms of a general license are specified in this information bulletin, however, the organism is exempted, or may be used only as a fishing bait, or domestic pet food (annotated as BPF) under this exemption. Annotated species include wax moth, and house cricket.

List Development and Modification: The department of natural resources developed the list based on the best current information available. The department will seek approval of modifications, from the natural resources commission, as additional data becomes available. The modifications will be set forth in amendments to this information bulletin.

For more information concerning a listed organism, or to suggest modifications to the listing, please contact the following:

Indiana Department of Natural Resources
Division of Entomology and Plant Pathology
402 West Washington Street, Room W290
Indianapolis, Indiana 46204
Telephone: (317) 232-4120

Qualification and Listed Organisms: For a beneficial organism to qualify under 312 IAC 18-3-15(d) for an exemption or general license, the organism must originate from cultures free of parasites and pathogens. Bacterial, fungal, or viral beneficial organisms registered by the United States Environmental Protection Agency and the Office of the Indiana State Chemist are exempted. In addition, the following are exempted:

Bacteria

Arthrobacter globiformis
Bacillus lentimorbus
Bacillus popillae
Bacillus thuringiensis
Bacillus thuringiensis var. *kurstaki*
Nosema necatrix
Pseudomonas fluorescens

Earthworms

Eisenia fetida (= *foetida*) (Manure Worm, Tiger Worm, Red Wiggler)

Eisenia hortensis (European Nightcrawler)
Lumbricus terrestris (Nightcrawler, Dew Worm)

Fungi

Entomophaga maimaiga
Gliocladium virens
Trichoderma harzianum

Insects

Ablerus clisiocampae
Aceratoneuromyia indica
Acheta domesticus (House Cricket) (BPF)
Adalia bipunctata (Twospotted Lady Beetle)
Agathis pumila (Larch Casebearer Parasitic Wasp)
Ageniaspis fuscicollis
Agraulis vanillae (Gulf Fritillary Butterfly)
Agrilus hyperici (St. John's Wort Beetle)
Amblyseius fallacis
Amblyseius swirskii
Anagrus epos
Anagrus spiritus
Anagrus pseudococci
Anaphes flavipes
Anaphes iole (Fairyfly)
Anisopteromalus calandrae (Pteromalid Wasp Parasitoid)
Apanteles fumiferanae
Aphelinus abdominalis
Aphelinus fuscipennis
Aphidius colemani
Aphidius ervi (Lucerne Aphid Parasite)
Aphidius matricariae
Aphidoletes abietis
Aphidoletes aphidimyza
Aphthona cyparissiae (Brown Dot Leafy Spurge Flea Beetle)
Aphthona flava (Copper Leafy Spurge Flea Beetle)
Aphthona nigriscutis (Black Dot Spurge Flea Beetle)
Aphytis melinus (Red Scale Parasite)
Apion fuscirostre (Scotch Broom Seed Weevil)
Apion ulicis (Gorse Seed Weevil)
Apis mellifera (Honey Bee)
Arrhenophagus chionaspidis
Bangasternus orientalis (Yellow Starthistle Bud Weevil)
Bathyplectes anurus
Bathyplectes curculionis
Bathyplectes stenostigma
Blondelia nigripes
Brachymeria intermedia
Bracon hebetor
Bracon kirpatricki
Bracon pini
Bracon rhyacioniae (Pine tip moth parasitoid)
Calosoma sycophanta
Ceutorhynchus litura (Canada Thistle Stem Mining Weevil)
Chelonus annulipes
Chilocorus kuwanae
Chilocorus nigrinus
Chrysolina quadrigemina (Klamathweed Beetle)

Chrysoperla carnea (Common Green Lacewing)
Chrysoperla comanche (Comanche Lacewing)
Chrysoperla rufilabris
Coccinella septempunctata (Sevenspotted Lady Beetle)
Coccinella transversoguttata (Transverse lady beetle)
Coccygomimus disparis
Coeloides dendroctoni
Coleomegilla quadrifasciata
Coleophora klimeschiella (Russian Thistle Casebearer)
Coleophora parthenica (Russian Thistle Stem Miner)
Copidosoma floridanum
Cotesia flavipes
Cotesia marginiventris
Cotesia melanoscelus
Cotesia plutellae (Diamondback Moth Parasite)
Cotesia rubecula
Cryptolaemus montrouzieri (Mealybug Ladybird, Australian Ladybird)
Cybocephalus nipponicus
Cycloneda ancoralis
Cyphocleonus achates (Knapweed Root Weevil)
Dacnusa sibirica
Danaus plexippus (Monarch Butterfly)
Delphastus pusillus
Deraeocoris brevis
Deraeocoris nebulosus
Diachasmimorpha longicaudata (Longtailed Fruitfly Parasite)
Diadegma insulare
Diaeretiella rapae (Cabbage Aphid Parasite)
Diaparsis carinifer
Dibrachoides dynastes
Dicyphus hesperus
Diglyphus isaea
Encarsia deserti
Encarsia formosa (Greenhouse Whitefly Parasite)
Encarsia inaron
Encarsia nr. Diaspidicola
Eretmocerus californicus
Eretmocerus eremicus
Eretmocerus mundus
Eriopis connexa
Eupeodes nuda
Exenterus amictorius
Exeristes comstockii
Feltiella acarisuga
Galerucella californiensis (Loosestrife Leaf Beetle)
Galerucella pusilla (Golden Loosestrife Beetle)
Galleria mellonella (Wax moth or bee moth) (BPF)
Geocoris punctipes (Big-Eyed Bug)
Glypta fumiferana
Glyptapanteles flavicoxis
Glyptapanteles indiensis
Goniozus legneri
Harmonia axyridis (Asian Lady Beetle)
Harmonia yedoensis
Heraclides cresphontes (Giant Swallowtail Butterfly)

Hippodamia convergens (Convergent Lady Beetle)
Hippodamia tredecimpunctata (Spotted Amber Ladybird)
Horogenes punctorius
Hylobius transversovittatus (Root-Boring Weevil)
Hyperaspis binotata
Hyperaspis polita
Hyposoter ebeninus
Istocheta aldrichi
Itoplectis conquisitor
Larinus minutus (Lesser Knapweed Flower Weevil)
Larinus planus (Canada Thistle Bud Weevil)
Leptomastidea abnormis
Leptomastix dactylopii (Citrus Mealybug Parasite)
Leucoptera spartifoliella (Broom Twigminer)
Lindorus lophanthae (Purple Scale Predator)
Lonchaea corticis
Longitarsus jacobaeae (Ragwort Flea Beetle)
Lydella thompsoni (= *L. grisescens*)
Lydinolydella metallica
Lysiphlebus testaceipes (Greenbugs Aphid)
Macrocentrus ancylivorus (Oriental Fruit Moth Parasite)
Macrocentrus gifuensis
Macrolophus caliginosus
Mesoleius tenthredinis
Metaphycus helvolus (Black Scale Parasite)
Meteorus leviventris
Meteorus pulchricornis
Meteorus trachynotus
Microctonus aethiopoides
Microctonus colesi
Microlarinus lareynii (Puncturevine Stem Weevil)
Microlarinus lypriformis (Puncturevine Stem Weevil)
Microterys flavus
Microterys nietneri
Muscidifurax raptor (Raptor Fly Parasite)
Muscidifurax raptorellus
Muscidifurax zaraptor
Nanophyes brevis
Nanophyes marmoratus
Nasonia vitripennis (Jewel Wasp)
Nymphalis antiopa (Mourning Cloak Butterfly)
Oberea erythrocephala (Leafy Spurge Stem Boring Beetle)
Olesicampe benefactor
Ooencyrtus kuvanae
Ophyra aenescens (Black Garbage Fly)
Orgilus obscurator
Orius insidiosus (Insidious Flower Bug)
Orius tristicolor (Minute Pirate Bug)
Palexorista inconspicua
Papilio polyxenes (Black Swallowtail Butterfly)
Pediobius foveolatus (Bean Beetle Parasite)
Peristenus digoneutis
Phrydiuchus tau (Mediterranean Sage Root Crown Weevil)
Podisus maculiventris (Spined Soldier Bug)
Propylea quatuordecimpunctata (14-spot Ladybird Beetle)

Rhinocyllus conicus (Thistle Seedhead Weevil)
Rhyzobius lophanthae (Scale-Eating Ladybird)
Rodolia cardinalis (Vedalia Beetle)
Scolothrips sexmaculatus (Six-spotted Thrips)
Scymnus frontalis
Semiadalia undecimnotata
Spalangia cameroni
Spalangia corana
Spalangia endius
Spalangia nigroaenea
Sphenoptera jugoslavica (Bronze Knapweed Root Borer)
Spurgia esulae (Leafy Spurge Gall Midge)
Tenodera aridifolia sinensis (Chinese Mantid)
Tetrastichus incertus
Tetrastichus julius
Thanasimus dubius (Checkered Beetle)
Thripobius semiluteus (Greenhouse Thrips Parasite)
Tiphia popilliavora (Japanese Beetle parasitoid)
Tiphia vernalis (Spring Tiphia)
Trichogramma bactrae
Trichogramma brassicae
Trichogramma dendrolimi
Trichogramma evanescens
Trichogramma minutum (Minute Egg Parasite Wasp)
Trichogramma platneri
Trichogramma pretiosum
Trichogrammatoidea bactrae
Trichosirocalus horridus (Musk Thistle Rosette Weevil)
Tyria jacobaeae (Cinnabar Moth)
Urophora affinis (Banded Knapweed Gall Fly)
Urophora cardui (Canada Thistle Stem Gall Fly)
Urophora quadrifasciata (Knapweed Seedhead Fly)
Urophora sirunaseva (Yellow Star Thistle Gall Fly)
Vanessa atalanta (Red Admiral Butterfly)
Vanessa cardui (Painted Lady Butterfly)
Vanessa virginiensis (American Painted Lady Butterfly)
Xylocoris flavipes (Warehouse Pirate Bug)
Zeuxidiplosis giardi (St. John's Wort Midge)

Mites

Amblyseius barkeri
Amblyseius californicus
Amblyseius cucumeris
Amblyseius mckenziei
Galendromus annectans
Galendromus helveolus
Galendromus occidentalis (Western Predatory Mite)
Hypoaspis aculeifer
Hypoaspis miles
Iphiseius degenerans
Mesoseiulus longipes (Longipes Mite)
Metaseiulus occidentalis
Neoseiulus barkeri
Neoseiulus californicus (Californicus Mite)
Neoseiulus cucumeris
Neoseiulus fallacis (Fallacis Mite)

Neoseiulus setulus
Phytoseiulus macropilis
Phytoseiulus persimilis (Chilean Predatory Mite)
Pyemotes tritici (Straw Itch Mite, Fire Mite)
Typhlodromus pyri

Mollusks

Deroceras laeve (Marsh Slug)
Deroceras reticulatum (Grey Garden Slug)
Mesodon thyroides (Whitelip Globe Snail)
Neohelix albolabris (Whitelip Snail)
Rumina decollata (Decollate Snail)

Nematodes

Heterorhabditis bacteriophora
Heterorhabditis heliothedis
Heterorhabditis megidis
Neoaplectana carpocapsae
Neoaplectana glaseri
Steinernema carpocapsae (Mole Cricket Nematode)
Steinernema feltiae
Steinernema glaseri
Steinernema riobravisi

Protozoa

Nosema locustae
Vairimorpha necatrix

Effective Date: The commission approved this information bulletin during a meeting held on May 14, 2004. The bulletin is effective July 1, 2004.

**DEPARTMENT OF STATE REVENUE
AUDIT-GRAM NUMBER IR-023**

May 7, 2004

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

Sale of Tangible Personal Property with Services – Sales Tax

Authority: IC 6-2.5-4-1(e); IC 6-2.5-1-5; 45 IAC 2.2-4-1; Comm. Directive # 21; Comm. Directive #22; Comm. Directive #23; The Frame Station, Inc., Ind. Tax Ct., 2002; Eric Howland, Ind. Tax Ct., 2003

IC 6-2.5-4-1. Selling at Retail

(a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

....
(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)....any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect the property transferred before its transfer and which are separately stated on the transferor's records. [1980]

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser. [Effective March 18, 2004]

IC 6-2.5-1-5. "Gross retail income" defined

(a).... "gross retail income" means the total gross receipts, of any kind or character, received in a retail transaction....without any deduction for:

-
(4) delivery charges;

(5) installation charges

[Effective January 1, 2004]

....

For purposes of subdivision (4), delivery charges 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.

(b) "Gross retail income" does not include...gross receipts attributable to:

....

(6) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

[Effective March 18, 2004]

I. GENERAL STATEMENT

All sales of tangible personal property [FN 1] are subject to sales tax. All sales of labor and services are exempt from sales tax. A transaction which includes both the sale of tangible personal property and the sale of related services is subject to tax if the service has been performed prior to the transfer of the property. Services performed after the transfer of the property are not subject to sales tax.

II. TRANSFER OF PROPERTY

The transfer of property occurs when the buyer: (1) agrees to buy property from a seller; (2) pays the purchase price; and, (3) takes ownership and possession of the property. [FN 2] "It is a general rule....that in case of sale of personal property, where any act remains to be done before the sale is complete, the title remains in the seller." [FN 3] Effective March 18, 2004, the transfer of tangible personal property in a retail transaction is deemed to occur after delivery.

III. SERVICES PERFORMED PRIOR TO THE TRANSFER OF PROPERTY

Indiana Code 6-2.5-4-1(e) permits the imposition of sales tax on otherwise non-taxable services when the services are performed with respect to property prior to the transfer of the property to the buyer. Labor and/or services performed prior to the transfer of property are considered to be part of a unitary transaction and subject to sales tax.

A "unitary" transaction includes all items of tangible personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated. [FN 4] Although this would appear to exempt any transaction in which the seller separately states the cost of labor and/or services, this is not the case. One must look to the "true object" of the transaction. What does a buyer intend to buy---an individual's skills or a tangible end result of those skills. [FN 5]

A retail unitary transaction exists when the transfer of the property and rendition of services are "inextricable and indivisible." [FN 6] A *retail unitary transaction* is taxable to the extent that income from the transaction represents "....service performed in respect to the property transferred *before its transfer* and which are separately stated on the transferor's records." [FN 7] (emphasis added)

The Indiana Tax Court has been consistent in rulings, where the property and related services are dependent on each other in order to provide the buyer with a viable end product, the total gross selling price is subject to sales tax. [FN 8] This is irrespective of the fact that the seller might separately state the charges for property and services on the buyer's invoice.

IV. SERVICES PERFORMED AFTER THE TRANSFER OF PROPERTY

Labor or services performed after the transfer of property to the buyer are not subject to sales tax. In those instances in which the buyer obtains title to the property and the seller is subsequently required to perform additional service on the property, no sales tax is due on the service performed after the transfer.

V. INSTALLATION CHARGES

Effective March 18, 2004 separately stated installation charges are not subject to sales tax. Installation charges included in the total selling price of tangible personal property are considered to be part of a unitary transaction and subject to the collection of sales tax.

[FN 1] IC 6-2.5-1-27 (effective January 1, 2004) defines tangible personal property as something that can be seen, weighed, measured, felt, or touched or in any other manner perceptible to the senses. The term includes electricity, gas, water, steam and prewritten computer software.

[FN 2] *The Frame Station, Inc.*, 771 N.E.2d 129 (Ind. Tax 2002)

[FN 3] *Farmer's Nat'l Bank of Sheridan v Coyner*, 88 N.E. 856, 858 (Ind. Ct. App. 1909)

[FN 4] IC 6-2.5-1-1(a)

[FN 5] *Accountants Computer Services, Inc. v. Kosydar*, 298 N.E.2d 519 (Ohio 1973)

[FN 6] *Martin Marietta*, 398 N.E.2d 1311 (Ind. Ct. App. 1979)

[FN 7] IC 6-2.5-4-1(e)

[FN 8] *The Frame Station, Inc.*, 771 N.E.2d 129 (Ind. Tax 2002); *Eric Howland*, 790 N.E.2d 627 (Ind. Tax 2003)

**DEPARTMENT OF STATE REVENUE
AUDIT-GRAM NUMBER IR-026
May 7, 2004**

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

Freight Charges – Sales Tax & Gross Income Tax [FN 1]

Authority: IC 6-2.1-2-1(b)(2); IC 6-2.5-4-1(e); IC 26-1-1 to 9; 45 IAC 2.2-4-3; 45 IAC 1-1-33; 45 IAC 1.1-2-5(c) [1999]; Comm. Dir. #21; Comm. Dir. #22; Comm. Dir. #23; *Martin Marietta Corp.* Ind. Ct. App., 1979

IC 6-2.1-2-1. Definition "Selling at retail"....

....
(b)(2) [S]elling at retail includes only:
 (A) The price of the property transferred.... and
 (B) Any bona fide charges separately stated on the records of the transferor.... for.... delivery.... before the.... property is delivered to the transferee.... [1981]

IC 6-2.5-4-1 Selling at retail....

....
(e) [I]ncome received from selling at retail is only taxable.... to the extent.... (it).... represents:
 (1) the price of the property transferred.... and
 (2)....any bona fide charges.... for.... delivery.... in respect to the property transferred before its transfer and which are separately stated on the transferor's records. [1980]
For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser. [Effective March 18, 2004]

IC 6-2.5-1-5 "Gross retail income" defined....

(a)...."gross retail income" means gross receipts....without any deduction for:
....
(4) delivery charges; [Effective January 1, 2004]

....
For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of the property, including, but not limited to transportation, shipping, postage, handling, crating, and packing. [Effective March 18, 2004]

I. GENERAL STATEMENT

For Gross Income Tax purposes prior to January 1, 2003, the sale of tangible personal property is subject to tax at the low rate. The sale of service is subject to tax at the high rate. Transactions which include both the sale of tangible personal property and the provision of a service must be analyzed to determine whether the service has been performed prior to or after transfer.

For Sales Tax purposes, prior to January 1, 2004, services performed prior to transfer of the property are subject to tax. Services performed after transfer of the property are not subject to tax.

Effective January 1, 2004, all charges for delivery, including transportation, shipping, postage, handling, crating and packing, are subject to sales tax regardless of shipping terms.

II. TAXABILITY OF FREIGHT CHARGES – PRIOR TO JANUARY 1, 2004

A. Freight Charge, "F.O.B. Destination"

1. Sales Tax – Any freight service charge is subject to Sales Tax.
2. Gross Income Tax – Subject to Gross Income Tax at the low rate.

B. Freight Charge, "F.O.B. Origin"

1. Sales Tax – Any freight service charge is not subject to Sales Tax.
2. Gross Income Tax – Subject to Gross Income Tax at the high rate.

C. Freight Charge, F.O.B. Point Unknown

If the place of delivery of the goods is unknown or ambiguous, the F.O.B. point is assumed by law [FN 2] to be the seller's place of business or "F.O.B. origin."

D. "Shipping and Handling"

Shipping and handling are additional charges made by a seller to compensate them for costs associated with preparing an item for shipment and shipment to the purchaser.

1. Sales Tax – The charge is subject to Sales Tax.
2. Gross Income Tax – Subject to Gross Income Tax at the low rate.

E. Delivery by Seller's Own Conveyance

Freight charges incurred for delivery in the seller's own conveyance are subject to the collection of sales tax. [FN 3] Freight charges for delivery made by common carrier should be evaluated according to F.O.B. designation.

F. Prepaid Freight

1. A freight charge stated as "prepaid" means the property is sold "F.O.B." origin and delivery is the responsibility of the seller only as an agent for buyer. Either with or without buyer's direction, seller agrees to negotiate, transact, and pay for the necessary freight service to deliver the buyer's property to the buyer's location provided the seller is reimbursed for the cost.

a. Sales Tax – The prepaid charge is not subject to Sales Tax.

b. Gross Income Tax – The reimbursement is not taxable to the seller.

2. If the stated charge for "Prepaid Freight" significantly [FN 4] exceeds the actual charge for freight incurred by the seller, the entire charge shall be treated as the seller's delivery service charge prior to transfer.

G. Services Performed at the Delivery Point

Taxability of the seller's charge for services performed at the delivery point [FN 5] will depend upon that point in time at which the property transfers as explained above.

III. POLICY CHANGES**A. Gross Income Tax: The Gross Income Tax was repealed effective January 1, 2003.**

B. Sales Tax: Under IC 6-2.5-1-5(b)(4), effective January 1, 2004, delivery charges are defined to mean "...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." Delivery charges are subject to sales tax if:

1. the property is sold;
2. the property is taxable to the purchaser; and,
3. delivery is made by the seller or on behalf of the seller.

The statutory changes made in IC 6-2.5-4-1(e), effective March 18, 2004, have rendered the Tax Court decision in *Cowden and Sons Trucking, Inc.* invalid. Transportation companies [FN 6] will be required to register as retail merchants and collect sales tax on the entire charge [FN 7] when they purchase tangible personal property and deliver the property to customers.

[FN 1] The Gross Income Tax Act was repealed effective January 1, 2003.

[FN 2] Uniform Commercial Code, Sales, IC 26-1-2-308

[FN 3] LOF 97-0379; 99-0423; 01-0057; 01-0215

[FN 4] Differences in stated and actual charges are significant if they are consistently in excess of actual and imply a planned attempt at consequential profit.

[FN 5] e.g., charges for truck loading and unloading, installation of blocking material, pallet charges, services of seller's special handling equipment, demurrage, etc.

[FN 6] i.e., hauling companies

[FN 7] Cost of tangible personal property and separately stated hauling charge

DEPARTMENT OF STATE REVENUE**COMMISSIONER'S DIRECTIVE #24****July 2004**

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should only serve as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Elimination of Form ST-136A, Indiana Out-of-State Purchaser's Sales Tax Exemption Affidavit

I. INTRODUCTION

Effective July 1, 2004 the ST-136A Form is no longer an effective document for out of state purchasers to claim an exemption from Indiana sales tax for purchases in Indiana that would be exempt if purchased in their state of residence.

II. STATUTORY CHANGES

IC 6-2.5-13-1(d)(1) provides that when there is a sale of tangible personal property, the sale shall be sourced to the business location of the seller when the product is received by the purchaser at the business location of the seller.

III. ALTERNATIVE EXEMPTIONS

With the elimination of the ST-136A, an organization that is located out of state has several options to avail itself of a

legitimate exemption from the sales tax.

Form ST-104 is the form to be used by farmers purchasing tangible personal property to be used in direct production of agricultural products for sale. This form is to be used for a single purchase made at an Indiana merchant's location.

Form ST-106 is the form that is kept on record by the seller and is used by a person engaged in agriculture. This form is a blanket exemption certificate and is good for all exempt purchases made at a single location. The person engaged in agriculture can have the ST-106 on file at various locations if they make exempt purchases from several different sellers.

Form ST-105 is the general sales tax exemption certificate and is **NOT** to be used by a person engaged in agriculture, and is not valid for personal purchases. Only a person who has registered with the Department can use the ST-105 to purchase items exempt from the sales tax. Retailers, wholesalers or manufacturers can use the exemption certificate, if the item is purchased for resale. The certificate can be used for the purchase of manufacturing machinery, tools and equipment if the products are used directly in direct production. Nonprofit organizations can make exempt purchases using the ST-105, but the organization should be aware that many items are subject to sales tax even if they are purchased by a not-for-profit organization. For further information, please refer to Sales Tax Information Bulletin #10. Government units can make purchases exempt from the sales tax and are also required to complete an ST-105 when making purchases.

IV. REGISTRATION REQUIREMENTS OF THE DEPARTMENT

Persons desiring to make exempt purchases must register with the Department as a retail merchant by completing Form BT-1. This registration will provide the person or entity with a Taxpayer Identification Number (TID), which is required to make purchases exempt from the sales tax. Out of state persons can register with the Department and obtain a TID in order to make qualifying exempt purchases.

Registration can be accomplished through the Department's web site at www.IN.gov/dor or by contacting one of the district offices throughout the state.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #25
July 2004**

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should only serve as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Elimination of Form ST-137, Certificate of Exemption for an Out-of-State Delivery of Motor Vehicle, Manufactured Home, Aircraft, Watercraft or Trailer to be Registered and/or Titled Outside the State of Indiana

I. INTRODUCTION

Effective July 1, 2004, the ST-137 Form is no longer an effective document for out of state purchasers to claim an exemption from Indiana sales tax for purchases of motor vehicles, manufactured homes, aircraft, watercraft or trailers to be titled or registered outside the State of Indiana.

II. STATUTORY CHANGES

Effective July 1, 2004, IC 6-2.5-3-5 has been amended to delete the language that denied credit against Indiana use tax for sales and use tax paid to another state on the purchase of vehicles, watercraft or aircraft.

Additionally, IC 6-2.5-5-15 has been repealed as of the same effective date. IC 6-2.5-5-15 allowed an exemption from sales and use tax on the purchase of motor vehicles, trailers, watercraft or aircraft to be taken out of state. Both of these provisions are contained in HEA 1365-2004.

These changes were implemented in response to a Tax Court case, Bradley J. Rhoades v. Indiana Department of State Revenue, 774 N.E.2d 1044 (Ind. Tax 2002), which declared the denial of a credit for sales and use tax paid to another state on the purchase of a vehicle was unconstitutional.

III. SCOPE OF CHANGE

The repeal of IC 6-2.5-5-15 only affects situations where the purchaser takes possession of the vehicle prior to taking the vehicle out of state.

This repeal does not affect out of state sales by Indiana dealers. For a sale of a vehicle to be considered out of state, the purchaser must take possession via delivery outside of Indiana. No exemption certificate is required when making an out of state sale. However, the sales contract must specify that the vehicle is to be delivered out of state and the dealer must maintain shipping

Nonrule Policy Documents

documentation to verify that the vehicle was delivered to the purchaser at a specific out of state location.

Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE

Departmental Notice #2

June 1, 2004

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 July 1, 2004, is six and six-tenths cents (\$.066) 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 (\$1.228). The most recent retail price of gasoline available was based on data contained in the May 2004 Petroleum Marketing Monthly as published by the Energy Information Agency.

The prepayment rates for periods beginning July 1, 1994 are set out below:

<u>Period</u>	<u>Rate Per Gallon</u>
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
July 1, 2004 to December 31, 2004	6.6 cents

Indiana Department of State Revenue

Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE

STATE OF INDIANA)	
)	SS: BEFORE THE STATE OF
COUNTY OF MARION)	INDIANA DEPARTMENT OF
)	STATE REVENUE
IN THE MATTER OF:)	
)	
SEVILLE SENIOR CITIZENS)	
CORPORATION,)	Docket Number: 29-2003-0411
)	
PETITIONER)	

FINAL ORDER

The Commissioner of the Indiana Department of State Revenue, having considered (a) the applicable statutes and regulations, (b) the record of the proceedings, (c) the Administrative Law Judge's Findings of Facts, Conclusions of Law and Proposed Order, and (d) the Petitioner's Objections to the Findings of Fact, Conclusions of Law and Proposed Order, now enters the following Final Order:

IT IS NOW HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The Proposed Order issued on April 1, 2004, with respect to the above captioned Petitioner by Administrative Law Judge Bruce R. Kolb is hereby affirmed.
2. The Findings of Fact, Conclusions of Law, and Proposed Order issued on April 1, 2004, with respect to the above captioned Petitioner by Administrative Law Judge Bruce R. Kolb is hereby adopted as the Indiana Department of State Revenue's Final Order on this matter.
3. Appeals to this Order may be made pursuant to IC 4-21.5-3 *et seq.* and/or IC 4-21.5-5 *et seq.*

SO ORDERED THIS 28TH DAY OF APRIL, 2004

Kenneth L. Miller, Commissioner
Indiana Department of State Revenue

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #3
INCOME TAX
JULY, 2004**

(Replaces Information Bulletin # 3, dated January, 2003)

DISCLAIMER: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Payment of Indiana Estimated Tax by Individuals

REFERENCES: IC 6-3-4-4.1; IC 6-3.5-1.1-18; IC 6-3.5-6-22; IC 6-3.5-7-18; IC 6-8.1-3-3

INTRODUCTION:

Estimated income tax payments must be made by an individual who:

- (1) receives income from which Indiana adjusted gross income tax, county adjusted gross income tax, county option income tax, or county economic development income tax, is not properly withheld; and
- (2) Has an annual income tax liability described under subdivision (1), above, that is four hundred dollars (\$400) or more.

Even if an individual does not meet these requirements, the individual may still make estimated payments to reduce the amount that will be due when the annual individual adjusted gross income tax return is filed.

I. METHODS FOR PAYMENT OF ESTIMATED TAX

Estimated Tax installment payments are due on April 15, June 15, September 15, and January 15 following the last month of

the tax year. A person filing on a fiscal year rather than calendar year basis should adjust the due dates to correspond with the appropriate voucher for the fiscal year. If the due date falls on a national or state holiday, Saturday, or Sunday, payment is timely if it is postmarked by the day following the holiday or Sunday.

Estimated Tax installment payments may be made by one of the following methods: using a pre-printed estimated tax voucher which is issued by the Department on an annual basis to taxpayers with a history of paying estimated tax; obtaining from the Department or downloading from the Department's web site www.IN.gov/dor a paper Form IT-40ES tax voucher; or by paying estimated tax electronically from the Department's web site www.IN.gov/dor.

While an installment payment cannot be changed once it has been made, future payments can be adjusted to reflect a change in the annual estimated tax due. Future installment payments are determined by subtracting the amount of the previous payments from the amount of the estimated payments not yet paid.

Any installment payment received after January 15 for the preceding tax year will be either returned to the taxpayer or credited against the taxpayer's liability for the following year.

II. CALCULATION OF THE QUARTERLY ESTIMATED PAYMENT

The following schedule should be used to determine the amount of estimated tax due:

- | | |
|--|----------|
| A. Total Estimated Income for the Tax Year | A. _____ |
| B. Total Exemptions x \$1,000 (plus \$1,500 per Qualifying Dependent for Tax Year) | B. _____ |
| C. Amount Subject to Indiana Income Tax (Line A minus B) | C. _____ |
| D. Amount of State Income Tax Due (Line C x .034) | D. _____ |
| E. Amount of County Income Tax Due (Line C x County Tax Rate) | E. _____ |
| F. Total Estimated Income Tax (Line D plus Line E) | F. _____ |
| G. Estimated State and County Income Tax Withheld Plus Total of Other Credits | G. _____ |
| H. Amount of Annual Estimated Tax Due (Line F minus Line G) | H. _____ |
| I. Each Installment Amount Due (Line H divided by 4) | I. _____ |

III. PENALTIES

A taxpayer is subject to penalty for underpayment of estimated tax if the total state and county taxes due after credits exceeds four hundred dollars (\$400). The taxpayer will not owe a penalty if each installment payment equals at least one-fourth of the required annual payment. The required annual payment is the lesser of:

- (1) 90% of the tax shown on the current year return;
- (2) 100% of the tax shown on the previous year return;
- (3) 110% of the tax shown on the previous year's tax return if the taxpayer is not a farmer or fisherman and the Indiana adjusted gross income shown on a joint return is more than \$150,000; or
- (4) 110% of the tax shown on the previous year's tax return if the taxpayer is not a farmer or fisherman and the Indiana adjusted gross income shown on the return is more than \$75,000 for a taxpayer who is either single or married and filing separately.

If the taxpayer is eligible for any of the exceptions to the penalty listed in (1), (2), (3), or (4) above, they must attach the Schedule IT-2210 to the individual income tax return showing that the exception has been met.

If a taxpayer's income is not received evenly during the year, the taxpayer can avoid penalty if the tax is paid in an amount at least equal to the annualized income installment by the due date of the installment. Schedule IT-2210A should be used to compute the annualized income installment amount. This schedule is available upon request or at the Department's Web Site (www.IN.gov/dor/). If a penalty is imposed for underpayment of estimated tax, the penalty is ten percent of the underpayment for that period.

IV. UNDERPAYMENT

The underpayment of an installment is the difference between the payment required for the installment (or the annual income statement, if applicable) and the amount paid. If a payment is made after the installment due date, the payment is considered to be made in the following installment period.

V. AVOIDING PENALTY FOR THE FOURTH INSTALLMENT

If a taxpayer files an annual individual adjusted gross income tax return and pays the entire tax due by January 31, the taxpayer will not receive a penalty for the installment payment due January 15. However, payment of the entire estimated tax liability or balance due with the fourth installment or with the filing of the return does not relieve the taxpayer from any penalty for failure to make prior estimated payments in a timely manner during the year.

VI. FARMERS AND FISHERMEN

A penalty is not imposed if:

- (1) at least two-thirds of the taxpayer's annual gross income for the current year or preceding year is from farming or fishing;
- (2) the taxpayer files Form IT-40 or Form IT-40PNR; and
- (3) The taxpayer pays the entire tax due by March 1.

The taxpayer should attach Schedule IT-2210 to the income tax return and complete the portion of the return labeled "Farmers and Fishermen Only". If the farmer or fisherman does not file the return and pay the tax by March 1, the taxpayer should complete Schedule IT-2210 to determine if a penalty applies.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN # 10
SALES TAX
JULY 2004**

(Replaces Bulletin #10 dated June 2002)

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SUBJECT: Application of Sales Tax to Nonprofit Organizations

REFERENCE: IC 6-2.5-5-21, IC 6-2.5-5-25, IC 6-2.5-5-26, 45 IAC 2.2-5-55, 45 IAC 2.25-56, 45 IAC 2.2-5-57, 45 IAC 2.2-5-58, 45 IAC 2.2-5-59, 45 IAC 2.2-5-60

INTRODUCTION

This bulletin discusses the application of Indiana sales/use tax to nonprofit organizations. This bulletin will discuss when sales tax must be collected by nonprofit organizations and when Indiana sales/use tax must be paid on purchases by nonprofit organizations.

REGISTRATION

When taxable retail sales are made by nonprofit organizations they must register with the Compliance Division, Nonprofit Section of the Indiana Department of Revenue and receive a Taxpayer Identification Number.

Nonprofit organizations needing sales/use tax exemption on qualified purchases, but not making retail sales, also must register with the Compliance Division, Nonprofit Section of the Indiana Department of Revenue and receive a Taxpayer Identification Number. The Taxpayer Identification Number may be used on sales tax exemption certificates (Form ST-105) when making qualified purchases, unless the organization has been classified as a "social" organization by the Internal Revenue Service. The organization's status for the sales/use tax purposes will appear on Form NP-1. Social organizations, including homeowner's associations, are not allowed to make purchases exempt from Indiana sales/use tax.

SALES BY QUALIFIED NONPROFIT ORGANIZATIONS

Sales of tangible personal property by qualified nonprofit organizations carried on for a total of not more than thirty (30) days in a calendar year and engaged in as a fund raising activity to raise funds to further the qualified nonprofit purposes of the organization are exempt from sales tax. The thirty (30) day rule applies to all sales by such organization and each day in which selling activities are conducted constitutes a "selling day" for purposes of determining whether a qualified nonprofit organization has conducted sales for more than thirty (30) days during any calendar year. This provision applies to social organizations as well as other qualified organizations.

If an organization conducts sales or fund raising activities during thirty-one (31) or more days in a calendar year (not necessarily consecutive), it is a retail merchant and must collect sales tax on all sales made during the calendar year. All organizations required to collect sales tax must register with the Department of Revenue and obtain a Retail Merchant Certificate in addition to registering as a nonprofit organization. A single application (Form BT-1) is used to register with the Indiana Department of Revenue for sales tax and food & beverage tax. A separate application is required for each business location. There is a \$25 non-refundable application fee for a Retail Merchant's Certificate. Form BT-1 is available from any Department of Revenue District Office (located in most major Indiana cities), Tax Fax, the Internet, or the State Information Center.

Sales of periodicals, books, or other property that is intended primarily either for the organization's educational, cultural, or religious purposes or for improvement of the work skills or professional qualifications of the organizations' members, may be sold exempt throughout the year.

PURCHASES BY NONPROFIT ORGANIZATIONS

Purchases for Own Use

In order to qualify for sales tax exemption on purchases as a nonprofit organization, the following conditions must prevail:

1. The organization must be named or described in IC 6-2.5-5-21. This includes nonprofit organizations organized and operated

exclusively for one or more of the following purposes:

- (a) Charitable
- (b) Literary
- (c) Civic
- (d) Religious
- (e) Educational
- (f) Scientific
- (g) Fraternal

2. Also, included are the following specifically named nonprofit organizations.

- (a) Business Leagues
- (b) Licensed Hospitals
- (c) Cemetery Associations
- (d) Monasteries
- (e) Churches
- (f) Parochial Schools
- (g) Convents
- (h) Pension Trusts
- (i) Labor Unions

3. The organization is not operated predominantly for social purposes.

4. In order for a purchase by a nonprofit organization to qualify for exemption, the article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for individuals, such as meals and lodgings, are not eligible for exemption. If a member of the organization purchases a meal or lodging, even if the member is to be reimbursed by the organization, the purchase is not exempt, and the member must pay sales tax at the time of purchase. Purchases used for social purposes are never exempt.

5. The fact that an organization is incorporated as a nonprofit corporation or is being exempted from tax by the Internal Revenue Service does not necessarily mean that purchases made by the nonprofit organization are exempt from sales/use tax.

Organizations, described above, that are registered with the Indiana Department of Revenue as a nonprofit organization may purchase exempt from Indiana sales/use tax purchases of tangible personal property primarily used in carrying out the nonprofit purpose of the qualified organization. To purchase tax exempt, the organization must complete and provide to the vendor a Form ST 105.

Purchases by Non-Indiana nonprofit organizations

Nonprofit organizations not registered with the Indiana Department of Revenue may not issue a general exemption certificate (Form ST 105) to Indiana suppliers. Nonprofit organizations not located in Indiana must pay the Indiana sales/use tax to the supplier and file a claim for refund using Form GA-110L. Copies of the sales invoices and a copy of the Federal Determination Letter must accompany the claim for refund. As an alternative, if the nonprofit organization is not located in Indiana, but is having a function, meeting or convention in Indiana, the organization may provide the Department with a copy of its Federal Determination Letter and advise the Department by letter the nature of the items for which exemption is requested and provide dates of the event. When the Department approves the nonprofit organization's request for exemption, the Department will issue to the nonprofit organization a letter to be provided to the vendor indicating that purchase is exempt from Indiana sales/use tax. Please allow a minimum of thirty (30) days to process an exemption letter request. Please mail the request to: Indiana Department of Revenue, Nonprofit Section, Room 203, Indiana Government Center North, 100 N. Senate Avenue, Indianapolis, IN 46204

Purchases for Resale

Tangible personal property purchased for resale by a nonprofit organization is eligible for sales tax exemption.

Purchases by Social Organizations

Purchases of tangible personal property to be used by organizations organized and operated predominantly for social purposes are not exempt. If over fifty percent (50%) of its expenditures are related to social activities, such as food and beverage services, golf courses, swimming pools, dances, parties, and other similar social activities, the organization will be considered to be predominantly organized and operated for social purposes. Homeowner Associations do not qualify for tax exempt status under Indiana law.

This bulletin applies only to the status of nonprofit organizations under the sales tax act. Nonprofit organizations are subject to the Adjusted Gross Income Tax Act on unrelated business income as defined in Internal Revenue Code Section 513.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #17
SALES TAX
JULY, 2004**

(Replaces Bulletin #17 dated May, 2002)

DISCLAIMER: Information bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this bulletin should serve only as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Application of Indiana Sales Tax to Cable or Satellite Television or Radio Service

REFERENCES: IC 6-2.5-4-11

All cable or satellite television companies and radio service providers must register as retail merchants and collect and remit sales tax on charges made for cable, satellite television or radio service. Sales tax does not apply to initial installation charges.

Cable and satellite television, and radio service companies must pay sales tax on their purchases of tangible personal property.
Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #28
SALES TAX
JULY, 2004**

(Replaces Information Bulletin #28, dated December 1992)

DISCLAIMER: Informational bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Motor Vehicle Sales and Repairs

REFERENCES: IC 6-2.5-1-6, IC 6-2.5-2-2, IC 6-2.5-3-6, IC 6-2.5-5-15, 45 IAC 2.2-3-22, 45 IAC 2.2-5-22, 45 IAC 2.2-5-21

INTRODUCTION

The sale of any vehicle required by Indiana to be licensed for highway use shall be subject to the sales/use tax unless such purchase is entitled to a statutory exemption shown on Form ST-108E.

The selling price upon which the tax will be based will be the actual amount of consideration tendered for the vehicle after deducting all appropriate discounts and trade-in allowances. The deduction for a trade-in allowance applies only to vehicles traded in and does not apply to other property, either personal or real, which is traded for a vehicle.

I. TAXABLE SELLING PRICE

A manufacturer's rebate is not considered deductible for sales tax purposes. This is because the purchaser is not entitled to the rebate until the vehicle is sold. The purchaser is simply assigning in advance the cash rebate to the dealer as part of the purchaser's consideration in buying the vehicle. A documented manufacturer's rebate stipulates that the rebate must be assigned to the dealer by the purchaser and the dealer's gross retail income will reflect the amount of the rebate, therefore, the rebate would be considered taxable for sales tax purposes.

A manufacturer's price reduction is considered deductible for sales tax purposes. This is because the manufacturer is actually reducing the selling price of the vehicle. The dealer (seller) does not receive the amount of the price reduction as consideration.

A dealer's price discount is also considered deductible in determining the amount on which sales tax is charged. The selling price is reduced by the dealer's price discount. The dealer (seller) does not receive the amount of the price discount as consideration for the vehicle sale.

The selling price upon which the tax is based for purposes of calculating the sales tax is indicated by the following examples:

1. Vehicle Sticker Price	\$12,000
Dealer Discount	\$ 500
Used Vehicle Trade	\$ 4,000
\$1,000 Rebate Assigned as Down Payment by Purchaser	<u>-0-</u>

Nonrule Policy Documents

	Taxable Selling Price	\$ 7,500
2.	Vehicle Sticker Price	\$12,000
	Dealer Discount	\$ 500
	Used Vehicle Trade	\$ 4,000
	\$1,000 Rebate Direct to Customer	<u>-0-</u>
	Taxable Selling Price	\$ 7,500
3.	Vehicle Sticker Price	\$12,000
	Dealer Discount	\$ 500
	Used Vehicle Trade	\$ 4,000
	Manufacturer Price Reduction (not rebate)	\$ 1,000
	Taxable Selling Price	\$ 6,500

Documentation fees for services performed after the transfer of the vehicle are not considered part of the sales price of the vehicle and therefore are not subject to tax. Transfer of the vehicle takes place when the purchaser takes possession and control of the vehicle and assumes the risk of loss, even though title has not yet been transferred. However, the dealer must maintain adequate records to show which services pertain to the fees charged and that the services were performed after the transfer of the vehicle.

II. PURCHASES FROM INDIANA DEALERS

If the vehicle is purchased from a registered Indiana Motor Vehicle Dealer, the dealer must collect the tax and provide to the purchaser completed Form ST-108 showing that the tax has been paid to him. If the purchaser claims exemption and no tax is collected by the dealer, the statement at the bottom of Form ST-108E must be completed and signed by the purchaser. Title applications on sales by registered dealers without a Form ST-108, completed by the dealer, will not be accepted. The ST-108 must be attached to the revenue copy of the title application by the license branch. Whenever a purchaser claims an exemption on Form ST-108E, the dealer must retain a completed exemption certificate.

Effective July 1, 2004 motor vehicles purchased in Indiana to be immediately registered or licensed for use in another state are subject to Indiana sales tax.

Motor vehicles leased in Indiana are subject to sales tax. The tax applies to the primary property location for each periodic payment if the lease requires recurring periodic payments.

III. INSTATE PURCHASES FROM PERSON OTHER THAN INDIANA DEALERS

If a vehicle is not purchased from a registered Indiana dealer, then the license branch must collect the use tax at the time of registration unless the purchaser is entitled to claim exemption from the tax for one of the reasons shown on Form ST-108E.

The license branch will compute the tax due based on the actual selling price of the vehicle if:

- (1) The seller signs a written affidavit under penalty of perjury stating the actual selling price of the vehicle; and
- (2) The buyer presents the affidavit to the license branch at the time of registration.

NOTE: The completion of BMV Form 15-ST will satisfy the written affidavit requirement. All other affidavits must be notarized before acceptance by license branches.

In the absence of an affidavit, the license branch shall compute the tax due based on the presumption that the selling price of the vehicle is the average retail value as shown in a nationally recognized used car guide for that particular vehicle's year, make, and model.

When the tax is collected by the license branch, no ST-108 is necessary; however, the amount of tax collected must be noted on the title application by the license branch.

If the purchaser claims an exemption on a vehicle not purchased from a registered dealer, the ST-108E must be completed by either the purchaser or the license branch and attached to the revenue copy of the title application by the license branch. The ST-108E must show the specific paragraph under which the exemption is claimed, and be signed at the bottom of the form by the purchaser.

Exemption from the sales tax will not be allowed except for the reasons listed on Form ST-108E.

IV. PURCHASES FROM OUT-OF-STATE SELLERS

New vehicles purchased by Indiana residents and brought immediately into Indiana to be titled and registered are entitled to a credit for state sales tax paid to the other state. Leased vehicles located in Indiana will be subject to sales tax based on the value of the periodic lease payment.

V. SHOP SUPPLIES

Consumable supplies, such as, masking paper and tape, 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 to the Department if such consumable supplies were purchased exempt from sales tax.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #28WC
SALES TAX
JULY 2004**

(replaces Information Bulletin #28WC, dated September, 1990)

DISCLAIMER: Informational bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Indiana Sales or Use Tax on Watercraft

REFERENCE: IC 6-2.5

INTRODUCTION

The sale of any watercraft required to be registered by the State for use in Indiana shall be subject to the sales or use tax unless such purchase is entitled to one or more of the exemptions as provided on Form ST-108E.

The selling price upon which the tax will be based will be the actual amount of consideration tendered for the watercraft after deducting all cash discounts and trade-in allowances. The deduction for trade-in allowance applies only to watercraft traded in and does not apply to other property, either personal or real, which is traded for a watercraft.

I. TAXABLE SELLING PRICE

A manufacturer's rebate is not considered deductible for sales tax purposes. This is because the purchaser is not entitled to the rebate until the watercraft is sold. The purchaser is simply assigning in advance the cash rebate to the dealer as part of the purchaser's consideration in buying the watercraft. A documented manufacturer's rebate stipulates that the rebate must be assigned to the dealer by the purchaser and the dealer's gross income will reflect the amount of the rebate, therefore, the rebate would be considered taxable for sales tax purposes.

A manufacturer's price reduction is considered deductible for sales tax purposes. This is because the manufacturer is actually reducing the selling price of the watercraft. The dealer (seller) does not receive the amount of the price reduction as consideration.

A dealer's price discount is also considered deductible in determining the amount on which sales tax is charged. The selling price is reduced by the dealer's price discount. The dealer (seller) does not receive the amount of the price discount as consideration for the watercraft sale.

The selling price upon which the tax is based for purposes of calculating the sales tax is indicated by the following examples:

1.	Boat Sticker Price	\$12,000
	Dealer Discount	\$ 500
	Used Boat Trade	\$ 4,000
	\$1,000 Rebate Assigned as Down Payment by Purchaser	<u>-0-</u>
	Taxable Selling Price	\$ 7,500
2.	Boat Sticker Price	\$12,000
	Dealer Discount	\$ 500
	Used Boat Trade	\$ 4,000
	\$1,000 Rebate Direct to Customer	<u>-0-</u>
	Taxable Selling Price	\$ 7,500
3.	Boat Sticker Price	\$12,000
	Dealer Discount	\$ 500
	Used Boat Trade	\$ 4,000
	Manufacturer Price Reduction (not rebate)	<u>\$ 1,000</u>
	Taxable Selling Price	\$ 6,500

Documentation fees for services performed after the transfer of the watercraft are not considered part of the selling price of the watercraft and therefore are not subject to tax. Transfer of the watercraft takes place when the purchaser takes possession and

control of the watercraft and assumes the risk of loss, even though title has not yet been transferred. However, the dealer must maintain adequate records to show which services pertain to the fees charged and that the services were performed after the transfer of the watercraft.

II. PURCHASES FROM INDIANA DEALERS

If the watercraft is purchased from a registered Indiana dealer, the dealer must collect the tax and provide to the purchaser a completed Form ST-108 showing that the tax has been paid to the dealer. If the purchaser claims exemption and no tax is collected by the dealer, the statement at the bottom of Form ST-108E must be completed and signed by the purchaser. Whenever a purchaser claims an exemption on Form ST-108E, the dealer must retain a completed exemption certificate.

Effective July 1, 2004, watercraft purchased in Indiana to be registered or licensed for use in another state are subject to Indiana sales tax.

III. INSTATE PURCHASES FROM PERSONS OTHER THAN INDIANA DEALERS

A watercraft which is not purchased from a registered Indiana boat dealer, requires the Bureau of Motor Vehicles to collect the use tax at the time of registration unless the purchaser is entitled to claim exemption from the tax for one of the reasons shown on the reverse side of Form ST-108E.

The Bureau of Motor Vehicles will compute the tax due based on the actual selling price of the watercraft if:

- (1) The seller signs a written affidavit under penalties of perjury stating the actual selling price of the watercraft; and
- (2) The buyer presents such affidavit to the Bureau of Motor Vehicles at the time of registration.

In absence of an affidavit, tax due will be computed based on the presumption that the selling price of the watercraft was the highest book value for that particular watercraft year, make and model.

If the purchaser claims exemption on a watercraft not purchased from a registered dealer, the ST-108E must be completed by the customer and attached to the Department's copy of the title application. The ST-108E must show the specific paragraph under which the exemption is claimed, and be signed at the bottom of the form by the purchaser.

IV. SALES OF WATERCRAFT TO BE TRANSPORTED AND TITLED OR REGISTERED OUTSIDE OF INDIANA

If a person purchases a watercraft from an Indiana watercraft dealer and intends to transport the watercraft outside of Indiana, the watercraft is subject to sales tax as of July 1, 2004. If the person purchases the watercraft from someone other than a dealer and does not present the watercraft to be titled or registered in Indiana, no formal paperwork is necessary.

V. PURCHASES FROM OUT-OF-STATE SELLERS

Watercraft purchased out-of-state by Indiana residents and brought into Indiana to be registered are subject to Indiana use tax. This includes documented vessels registered with the U. S. Coast Guard. The tax will be based upon the bill-of-sale or other proof of purchase. Credit will be provided for sales and use tax paid to another state if the watercraft is required to be titled, registered or licensed in Indiana.

Out-of-state purchases of boats from dealers or individuals may be registered with the Bureau of Motor Vehicles, Watercraft Registration Titling Section.

VI. BOAT TRAILERS

The Indiana Sales and use tax applies to sales of boat trailers. The tax will be collected by the registered boat dealer at the time of purchase. If the trailer is purchased from someone other than a registered boat dealer, then the tax will be collected by the Bureau of Motor Vehicles at the time the trailer is registered for highway use. If a person plans to claim an exemption for the trailer, ST-108E should be completed.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #51T
SALES TAX
JULY 2004**

(Replaces Information Bulletin #51T dated January 2003)

DISCLAIMER: Informational Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Telecommunication Services

REFERENCES: IC 6-2.5-4-6; IC 6-2.5-4-13; IC 6-2.5-5-13; IC 6-8.1-15

Telecommunication Services

IC 6-2.5-4-6 subjects a wide range of intrastate telecommunication services to sales tax. The statute states that a person is a retail merchant making a retail transaction when the person provides intrastate telecommunication service. Telecommunication service is defined as the transmission of messages or information by or using wire, cable, fiber-optics, laser, microwave, radio, satellite, or similar facilities. It is not required that the person furnishing such service be a public utility for the service to be subject to sales tax.

HEA1114-2004, effective March 9, 2004, provides that if charges for telecommunication services that are not taxable are aggregated with charges that are taxable, the charges for the nontaxable services are exempt from the sales tax if the provider can reasonably identify the charges not subject to the sales tax from the service provider's books and records kept in the regular course of business.

A person is a retail merchant making a retail transaction when the person sells a prepaid telephone calling card at retail, a prepaid telephone authorization number at retail, or reauthorizes either of the above.

Effective August 1, 2002 a standardized method for calculating taxes, charges, and fees levied on wireless telephone service was established. The method is that all fees are charged and taxed based on the customer's place of primary use.

Example 1

Company A provides cellular phone service. Company A is not a public utility. Company A is required to collect and remit sales tax on its cellular service. The statute imposes sales tax on the transmission of messages or information by microwave, radio, satellite, or similar facilities. Cellular communications are covered by the statute and the statute does not require that a person be a public utility.

Value Added Services

Value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission are not telecommunication services and are therefore not subject to sales tax.

Example 2

Company B is a local telephone service provider. Company B provides several additional services and service enhancements to its customers. These include: call waiting, caller ID, call forwarding, distinct ringing, and voice mail. Company B's local phone service is subject to sales tax. However, not all of the additional services will be subject to sales tax if separately stated on the customer's monthly bill. Call waiting, caller ID, call forwarding, distinct ringing, and similar service enhancements are acting upon the transmission itself and do not affect the information contained in the transmission. These services or enhancements are therefore subject to sales tax. Voice mail and similar services are value added services which utilize computer processing applications to act upon the information for purposes other than transmission. The main distinction between voice mail and the other services is that the other services enhance the telecommunication service itself rather than provide a distinct non-telecommunication service. Therefore, voice mail and similar services are not telecommunication services under the statute and not subject to sales tax if separately stated on the customer's monthly bill. These charges must be separately stated or they will be subject to tax as part of a taxable unitary transaction.

The voice mail service should not be confused with the transmission of voice mail messages. Company B must pay sales or use tax on the intrastate transmission of the messages unless Company B's purchase of telecommunication services is exempt from sales tax. (See Example 6.)

Example 3

Company C is a local convenience store that offers to fax customer's documents for a fee. This charge is not subject to sales tax. Company C is not providing telecommunication services, rather, Company C is providing a service whereby it digitizes a document and sends it to its intended destination using a telecommunication service. Company C is the end user of the telecommunication service and must pay sales tax on any intrastate transmissions.

Example 4

Company Z provides access to a computer database. Customers of Company Z access the database over telephone lines using a modem. Company Z charges its customers for the amount of time they are connected to the database. Company Z is not required to collect sales tax on its charges. Company Z is providing a value added service that is not subject to sales tax. The use of the telephone line to provide the service is subject to sales tax.

Public Utilities

The sale of telecommunication services to public utilities or any provider of telecommunication services are not subject to sales or use tax.

Example 5

Company D provides local telephone service to Company W. Company W is a public utility providing water service to the community. The sale of local telephone service to Company W is not subject to sales tax because Company W is a public utility.

Example 6

Company E provides cellular phone service to Company D. Company D provides local telephone service to Company E.

Neither transaction is subject to sales tax because each is selling a telecommunication service to another provider of a telecommunication service.

Example 7

Company B is a local telephone service provider. Company B offers voice mail service to its customers. This service is not taxable. (See Example 2.) However, the fact that the voice mail service is not subject to tax does not exempt the use of telecommunication service in furtherance of that service. In this case, Company B is a telecommunication service provider and therefore its purchase or use of telecommunication service is exempt even when used in furtherance of a non-taxable service. If Company B was not a telecommunication service provider or a public utility, it would be required to pay sales or use tax on its purchase of telecommunication service in furtherance of its voice mail service.

Tangible Personal Property

A telecommunication service provider is not making a retail transaction subject to sales or use tax when it provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the telecommunication service.

Example 8

Company F is a paging services provider. Company F is not a public utility. The paging service is a telecommunication service and subject to sales tax. Company F provides its customers with a pager as part of the service. If there is a single charge for the service, then only that portion attributable to air time is subject to sales tax. The portion attributable to the providing of the pager itself is exempt. If Company F charges separately for air time and rents the pager, then both charges will be subject to sales tax. The difference being that providing only tangible personal property is exempt. In the latter case, the pager is rented not provided. (**Note:** Public utilities are not retail merchants making retail transactions when they lease or rent tangible personal property to another. Therefore, this analysis does not apply to public utilities. If the telecommunication service provider is a public utility, the charge for tangible personal property will be exempt unless the tangible personal property is being sold to the customer.)

The way that Company F contracts with its customers will determine whether Company F will pay sales or use tax when it purchases the pagers. If Company F charges separately for the pagers, it may purchase them exempt for resale or rental. However, if Company B provides the pagers as part of the service and does not charge separately for the pagers, it must pay sales or use tax on the purchase price of the pagers. (For additional information on purchases by telecommunication service providers see Example 10.)

Miscellaneous Charges

Charges for installing or servicing tangible personal property related to telecommunication service are not subject to sales tax.

Example 9

Company B is a local telephone service provider. Company B charges customers for initial hook-up and an additional charge if any labor is needed to physically connect the customer. The hook-up charge is subject to sales tax because it is a charge for telecommunication service. The charge for labor necessary to physically connect the customer is not taxable since it is not a charge for a telecommunication service.

Company B also offers a service whereby it will maintain the phone lines within the customer's house for a fixed monthly fee. This charge is not for telecommunication service and is therefore not subject to sales tax.

Any parts used in providing these services are not subject to sales tax if provided by Company B. (See Example 8.)

Purchases by Telecommunication Service Providers

Transactions involving acquisition of tangible personal property by telecommunication service providers are exempt from sales tax if the property is classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana Utility Regulatory Commission. Mobile telecommunications switching office equipment and radio or microwave transmitting equipment, including, towers and antennae are also exempt. If the provider is not subject to the control of the Indiana Utility Regulatory Commission, then the exemption applies to any property similar to that mentioned above.

Example 10

Company B is a local telephone service provider. Company B is subject to the authority of the Indiana Utility Regulatory Commission. Company B will look to the uniform system of accounts for local telephone companies to determine whether property it leases or purchases is subject to sales or use tax.

Example 11

Company F is a paging services provider. Company F rents space on a local tower for its antenna. The rental charges are not subject to sales tax. The purchase or rental of the antenna is also exempt from sales tax.

Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
SEVILLE SENIOR CITIZENS CORPORATION
DOCKET NO. 29-2003-0411

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND PROPOSED ORDER

An administrative hearing was held on Wednesday, January 28, 2004 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.

At hearing Petitioner's counsel requested time to file briefs. A continuance was granted in order for each side to file legal briefs. Petitioner's brief was received on March 11, 2004. The Department's Brief was received on March 23, 2004.

Petitioner, Seville Senior Citizens Corporation, was represented by Donald H. Dunnuck, of Dunnuck and Associates, 114 South Walnut Street, Muncie, IN 47305. Mr. Dunnuck was assisted by Amanda C. Dunnuck, Attorney at Law. 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 September 29, 2003, the Petitioner's charity gaming license was suspended for three (3) years, and Petitioner was assessed civil penalties in the amount of \$11,750. The Petitioner protested in a timely manner.

FINDINGS OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner beginning on August 13, 2003. (Record at 9).
- 2) On August 13, 2003 the Department's investigators went to Petitioner's premises where an allowable bingo event was in progress. (Record at 9).
- 3) The Department's investigators entered Petitioner's building and made contact with Mona Gregory. (Record at 10).
- 4) The president of Petitioner's organization is Mona Gregory. (Record at 69).
- 5) Ms. Gregory escorted the Department's investigators to a game room off of the bingo area. (Record at 10).
- 6) Eighteen (18) video gaming machines were located in a room adjacent to the area used by the Petitioner for bingo. (Record at 10).
- 7) The Department's investigator observed a basket of pulltabs in the room containing the video gaming machines. (Record at 14).
- 8) The Department's investigator observed Ruth Seifert in the room containing the video gaming machines. (Record at 14).
- 9) Ruth Seifert told the Department's investigator that she sold pulltabs to the bingo patrons who enter the room and that she was responsible for paying the winners. (Record at 14).
- 10) Pull tabs were being sold to Petitioner's patron in the "game room." (Record at 14).
- 11) The Department's investigator observed a pull tab game called "Elevens" in the game room. (Record at 14).
- 12) The room containing the video gaming machines was open seven days a week from 4pm to 9pm including the times when the Petitioner was conducting charity gaming. (Record at 15).
- 13) An open and unlocked door separated the Petitioner's location from the adjacent room containing the video gaming machines. (Petitioner's Exhibit 73).
- 14) Petitioner stated that the door was open to allow the patrons in the gaming room access to the restrooms. (Record at 73).
- 15) The room containing the video gaming machines had a door which leads to a hallway at the end of which was a common area containing the restrooms. (Petitioner's Exhibit #8).
- 16) Petitioner had "No Tipping" signs posted in the area where the bingo games were conducted. (Record at 17).
- 17) "No Tipping" signs were not posted in the room containing the video gaming machines. (Record at 17).
- 18) Petitioner's charity gaming license was not posted. (Record at 18).
- 19) According to the Department's investigator, Ms. Seifert was not listed as a worker or operator on Petitioner's charity gaming license application. (Record at 19).
- 20) Petitioner's financial records show a sixteen thousand dollar (\$16,000) donation. (Record at 21).
- 21) Mona Gregory and Bob Teeters, the alleged owner of the video gaming machines, split the money collected from the machines. (Record at 34).
- 22) Mona Gregory was asked by Petitioner's counsel during direct examination, "Okay, and do you have an agreement with Mr. Teeters concerning monies paid to you?" She responded under oath, "Yes." Petitioner's counsel then asked, "And tell the Hearing Officer what that agreement is." Ms. Gregory still under oath replied, "I volunteered back there and then whatever

the machines made Mr. Teeters would donate that to my senior citizens.” (Record at 71-72).

23) During questioning by the administrative law judge Mona Gregory stated, “I volunteered for Mr. Teeters and in return he donated to the Seville Senior Citizens half of whatever the gameroom made and then I took it as a donation.” (Record at 88).

24) Mona Gregory stated under oath that she informed the Department of two additional workers. These individuals were Michelle Burton and Ruth Seifert. (Record at 80).

25) Mona Gregory stated that she did not give Mr. Teeters a receipt for his tax records regarding the sixteen thousand dollar (\$16,000) donation. (Record at 88).

26) Mona Gregory is listed as an operator on Petitioner’s license. (Record at 92).

27) Petitioner sought to prove that the video gaming machines were a game of skill.

28) Petitioner hired a private investigator, to conduct an experiment on one of the machines at issue, in order to prove that it is a game of skill and not chance. (Record at 64).

29) The video gaming machines at issue are called Cherry Masters.

30) Cherry Master is a coin-operated video machine in which the player inserts money and presses a button. The video screen displays images that rotate in separate independent vertical lines, slow, and then stop. If a combination of images matches horizontally, vertically, or, in some cases, diagonally, the operator will receive credits. The Cherry Master also has a “stop” button that permit the player to control the length of time the images rotate before stopping. (Record at 62-63 and Petitioner’s Exhibit #1).

31) The machines at issue display odds of winning. (Petitioner’s Exhibit #2).

32) Petitioner’s private investigator manipulated the inner workings of the machine in order to conduct his experiment. (Record at 65-66).

33) Petitioner’s private investigator failed to use a control in his experiment. (Record at 66).

34) Petitioner’s private investigator was not familiar with the concept of a RNG or random number generator, nor did he know anything about how the machines work. (Record at 67).

35) The lack of knowledge on the part of Petitioner’s private investigator and his inability to conduct a proper experiment made his claims and the results of his experiment mere speculation at best.

36) The machines at issue do not constitute a game of skill.

37) On September 29, 2003, the Petitioner’s charity gaming license was suspended for three (3) years, and Petitioner was assessed civil penalties in the amount of \$11,750.

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, IC 4-32-8-5).

3) IC 4-21.5-3-25(b) provides in pertinent part, “The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts...”

4) IC 4-21.5-2-26(a) states, “The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exemption to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.”

5) “[B]ecause Pendelton’s interest in his insurance license was a property interest...a preponderance of the evidence would have been sufficient.” Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).

6) “It is reasonable...to adopt a preponderance of the evidence standard...” Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).

7) 45 IAC 18-1-18 states, “‘Conduct prejudicial to the public confidence in the department,’ as used in this article and in IC 4-32-1 means ***conduct that gives the appearance of impropriety***, including the failure to file tax returns, conducting a gaming event without a license, sports betting, ***operating a gambling device***, using or possessing a computer or other technologic aid, as defined in section 16 of this rule, or any other activity illegal under IC 35-45-5-1 et seq.” (Emphasis added).

8) 45 IAC 18-2-4 states in pertinent part, “A readable photocopy of a license is required to be prominently displayed at the facility where the event is being held. The original license must be available for inspection upon the request at all times. In addition to the photocopy, a legible sign of adequate dimension must be prominently posted during an event giving the name of the qualified organization, license number, and the expiration date of the license...”

9) 45 IAC 18-3-2(i) provides in pertinent part, “A legible sign of adequate dimension must be prominently posted during an event stating that the operator and workers are not allowed to accept tips.”

10) Pursuant to IC 4-32-6-24, “‘Worker’ means an individual who helps or participates in any manner in preparing for, conducting, assisting in conducting, cleaning up after, or taking any other action in connection with an allowable event under

this article.”

11) IC 4-32-7-4 provides, “The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:

- (1) Bingo cards.
- (2) Bingo boards.
- (3) Bingo sheets.
- (4) Bingo pads.
- (5) Any other supplies, devices, or equipment designed to be used in playing bingo designated by rule of the department.
- (6) Pull tabs.
- (7) Punchboards.
- (8) Tip boards.

(b) Qualified organizations must obtain the materials described in subsection (a) only from an entity licensed by the department.

(c) The department may not limit the number of qualified entities licensed under subsection (a).

12) IC 4-32-9-4 states, “(a) Each organization applying for a bingo license, special bingo license, charity game night license, raffle license, door prize drawing license, or festival license must submit to the department a written application on a form prescribed by the department.

(b) The application must include the information that the department requires, including the following:

- (1) The name and address of the organization.
- (2) The names and addresses of the officers of the organization.
- (3) The type of event the organization proposes to conduct.
- (4) The location at which the organization will conduct the bingo event, charity game night, raffle event, door prize event, or festival.
- (5) The dates and times for the proposed bingo event or events, charity game night, raffle event, door prize event, or festival.
- (6) Sufficient facts relating to the organization or the organization’s incorporation or founding to enable the department to determine whether the organization is a qualified organization.
- (7) The name of each proposed operator and sufficient facts relating to the proposed operator to enable the department to determine whether the proposed operator is qualified to serve as an operator.
- (8) A sworn statement signed by the presiding officer and secretary of the organization attesting to the eligibility of the organization for a license, including the nonprofit character of the organization.
- (9) Any other information considered necessary by the department.”

13) IC 4-32-9-16.5 provides in pertinent part, “A qualified organization that receives ninety percent (90%) or more of the organization’s total gross receipts from any events licensed under this article is required to donate sixty percent (60%) of its gross charitable gaming receipts less prize payout to another qualified organization that is not an affiliate, a parent, or a subsidiary organization of the qualified organization.” (Emphasis added).

14) IC 35-45-5-1 states, “...”Gambling device” means:

- (1) a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance;
- (2) a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation;
- (3) a mechanism, furniture, fixture, construction, or installation designed primarily for use in connection with professional gambling;
- (4) a policy ticket or wheel; or
- (5) a subassembly or essential part designed or intended for use in connection with such a device, mechanism, furniture, fixture, construction, or installation.

In the application of this definition, an immediate and unrecorded right to replay mechanically conferred on players of pinball machines and similar amusement devices is presumed to be without value...” (Emphasis added).

15) IC 35-45-5-3 provides that, “A person who knowingly or intentionally:

- (1) engages in pool-selling;
- (2) engages in bookmaking;
- (3) maintains, in a place accessible to the public, slot machines, one-ball machines or variants thereof, pinball machines that award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punchboards, jars, or spindles;
- (4) conducts lotteries, gift enterprises, or policy or numbers games, or sells chances therein;

(5) conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the stakes therein; or

(6) accepts, or offers to accept, for profit, money or other property risked in gambling; commits professional gambling, a Class D felony.” (Emphasis added).

16) “‘Gambling device’ is defined as ‘a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance,’ as well as ‘a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation.’” 2001 Op. Att’y Gen 9 (2002).

17) The court in Maillard held that because the quarter slide machine did not always return the same value or property for the same consideration upon each operation, the machine was “a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance,” therefore, it was found to be a gambling device prohibited by statute. State v. Maillard, 695 N.E.2d 637, 641 (Ind. Ct. App. 1998), transfer denied by Cain v. Maillard, 706 N.E.2d 173 (Ind. 1998).

18) 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...”

19) 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) A common misconception is that the conduct of gaming by an exempt organization is a charitable activity. There is nothing inherently charitable about gaming. The conduct of gaming is no different than any other trade or business carried on for profit. The fact that an organization may use the proceeds from its gaming to pay for the expenses associated with the conduct of its charitable programs will not make the gaming a charitable activity.

2) Petitioner had “No Tipping” signs posted in the area where the bingo games were conducted. Petitioner did not violate the provision of 45 IAC 18-3-2.

3) The Petitioner failed to have a readable photocopy of its license prominently displayed. In addition to the photocopy, a legible sign of adequate dimension must be prominently posted during an event giving the name of the qualified organization, license number, and the expiration date of the license. This constitutes a violation of 45 IAC 18-2-4.

4) The eighteen (18) Cherry Master video gaming machines are gambling devices as defined in IC 35-45-5-1.

5) Petitioner’s president, who was listed as an operator, and at least one of its workers admitted to working in the room containing the video gaming machines and where pull tabs were sold illegally. Petitioner’s president admitted to accepting money, on behalf of the charity, from the illegal video gaming machines. Petitioner also allowed its patrons free and unfettered access to the illegal video gaming machines. These activities constitute conduct prejudicial to the public confidence in the department. This constitutes a violation of 45 IAC 18-1-18.

6) In order for IC 4-32-9-16.5 to apply to a qualified organization it must first receive ninety percent (90%) or more its total gross receipts from any events licensed under this article. That means in computing the total gross receipts of a qualified organization only those amounts from events licensed by the department are included. However, money received by an organization from illegal gaming activities is subject to taxation at the state and federal level, will jeopardize its federal and state exemption status and is also evidence of criminal activity.

7) Petitioner did not violate the provisions of IC 4-32-9-16.5.

8) Petitioner’s serious violations were sufficient to warrant a three (3) year suspension of its charity gaming license.

9) The Department is hereby ordered to adjust the civil penalties in accordance with the above findings.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner’s appeal is sustained in part and denied in part. Petitioner had “No Tipping” signs posted in the area where the bingo games were conducted. The Petitioner failed to have a readable photocopy of its license prominently displayed. This constitutes a violation of 45 IAC 18-2-4. The eighteen (18) Cherry Master video gaming machines are gambling devices as defined in IC 35-45-5-1. Petitioner’s president and at least one of its workers admitted to working in the room containing the video gaming machines and where pull tabs were sold illegally. Petitioner’s president admitted to accepting money, on behalf of the charity, from the illegal video gaming machines. Petitioner also allowed its patrons free and unfettered access to the illegal video gaming

machines. These activities constitute conduct prejudicial to the public confidence in the department. This constitutes a violation of 45 IAC 18-1-18. Petitioner did not violate the provisions of IC 4-32-9-16.5. Petitioner's serious violations were sufficient to warrant a three (3) year suspension of its charity gaming license

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:

HAMMOND LODGE 570

LOYAL ORDER OF MOOSE, INC.

DOCKET NO. 29-2004-0036

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND PROPOSED DEPARTMENTAL ORDER**

An administrative hearing was held on Tuesday, March 16, 2004 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, Hammond Lodge #570, was represented by Gregory Francis, David Coppage, and Norman Chumley. 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 Departmental Order.

REASON FOR HEARING

On January 5, 2004, the Petitioner's charity gaming license was suspended for two (2) years, and Petitioner was assessed civil penalties in the amount of seven thousand dollars (\$7,000). The Petitioner protested in a timely manner.

FINDINGS OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner beginning in August of 2003. (Record at 9).
- 2) The Department's investigator observed minors participating in Petitioner's gaming activity. (Record at 11).
- 3) Petitioner allowed an individual identified on their license as a worker to call bingo. (Record at 13).
- 4) Petitioner allowed Glenda Holloway to act as an operator without having been a member of Petitioner's organization for requisite amount of time. (Record at 13).
- 5) Petitioner signed a lease agreement with the Lake County Board of Commissioners to lease space at the Lake County Fairground to conduct charity gaming from August 7 to August 9, 2003. (State's Exhibit D).
- 6) Another licensed entity signed a lease to conduct gaming from August 1, 2003 to August 4, 2003. (State's Exhibit D).
- 7) In August of 2003 the calendar week at issue began on Sunday the 3rd and ended on Saturday the 9th.
- 8) On January 5, 2004, the Petitioner's charity gaming license was suspended for two (2) years, and Petitioner was assessed civil penalties in the amount of seven thousand dollars (\$7,000).

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) IC 4-21.5-3-25(b) provides in pertinent part, "The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts..."

4) IC 4-21.5-2-26(a) states, "The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence

may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exemption to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence."

5) "[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).

6) "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).

7) 45 IAC 18-1-27 states, "'Location' means the street address and mailing address. It cannot include a post office box and is not connected by a common roof or wall with another structure where gaming activities occur."

8) 45 IAC 18-1-30 provides, "'Operator' means a member of a qualified organization who is:

(1) an Indiana resident;

(2) in good standing with the department; and

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

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

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

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

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

9) 45 IAC 18-3-2(D) states, "Only one (1) organization can conduct an event on the same day at the same location. An organization is limited to three (3) allowable events in a calendar week. An organization cannot lease its premises to another qualified organization if this would result in more than three (3) events being held on such premises during a calendar week. Unless otherwise authorized by the department, and organization is limited to one (1) allowable event each day..."

10) IC 4-32-9-4 states, "(a) Each organization applying for a bingo license, special bingo license, charity game night license, raffle license, door prize drawing license, or festival license must submit to the department a written application on a form prescribed by the department.

(b) The application must include the information that the department requires, including the following:

(1) The name and address of the organization.

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

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

(4) The location at which the organization will conduct the bingo event, charity game night, raffle event, door prize event, or festival.

(5) The dates and times for the proposed bingo event or events, charity game night, raffle event, door prize event, or festival.

(6) Sufficient facts relating to the organization or the organization's incorporation or founding to enable the department to determine whether the organization is a qualified organization.

(7) The name of each proposed operator and sufficient facts relating to the proposed operator to enable the department to determine whether the proposed operator is qualified to serve as an operator.

(8) A sworn statement signed by the presiding officer and secretary of the organization attesting to the eligibility of the organization for a license, including the nonprofit character of the organization.

(9) Any other information considered necessary by the department. (Emphasis added).

11) IC 4-32-9-20(b) states, "A facility may not be rented for more than three (3) days during a calendar week for an allowable event."

12) IC 4-32-9-28 provides, "An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event.

13) IC 4-32-9-34 states, "(a) Except as provided in subsection (b), **the following persons may not play or participate in any manner in an allowable event:**

(1) An employee of the department.

(2) **A person less than eighteen (18) years of age.**

(b) A person less than eighteen (18) years of age may sell tickets or chances for a raffle." (Emphasis added).

14) IC 4-32-7-4 provides, "The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:

(1) Bingo cards.

(2) Bingo boards.

(3) Bingo sheets.

(4) Bingo pads.

(5) Any other supplies, devices, or equipment designed to be used in playing bingo designated by rule of the department.

- (6) Pull tabs.
- (7) Punchboards.
- (8) Tip boards.

(b) Qualified organizations must obtain the materials described in subsection (a) only from an entity licensed by the department.

(c) The department may not limit the number of qualified entities licensed under subsection (a).

15) IC 4-32-9-4 states, "(a) Each organization applying for a bingo license, special bingo license, charity game night license, raffle license, door prize drawing license, or festival license must submit to the department a written application on a form prescribed by the department.

(b) The application must include the information that the department requires, including the following:

- (1) The name and address of the organization.
- (2) The names and addresses of the officers of the organization.
- (3) The type of event the organization proposes to conduct.
- (4) The location at which the organization will conduct the bingo event, charity game night, raffle event, door prize event, or festival.
- (5) The dates and times for the proposed bingo event or events, charity game night, raffle event, door prize event, or festival.
- (6) Sufficient facts relating to the organization or the organization's incorporation or founding to enable the department to determine whether the organization is a qualified organization.
- (7) The name of each proposed operator and sufficient facts relating to the proposed operator to enable the department to determine whether the proposed operator is qualified to serve as an operator.
- (8) A sworn statement signed by the presiding officer and secretary of the organization attesting to the eligibility of the organization for a license, including the nonprofit character of the organization.
- (9) Any other information considered necessary by the department."

16) 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..."

17) 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) A common misconception is that the conduct of gaming by an exempt organization is a charitable activity. There is nothing inherently charitable about gaming. The conduct of gaming is no different than any other trade or business carried on for profit. The fact that an organization may use the proceeds from its gaming to pay for the expenses associated with the conduct of its charitable programs will not make the gaming a charitable activity.

2) The Petitioner allowed minors to participate in its charity gaming activities in violation of IC 4-32-9-34.

3) Petitioner allowed an individual identified on their license as a worker to call bingo, a violation of 45 IAC 18-1-30(3)(D).

4) Petitioner allowed Glenda Holloway to act as an operator without having been a member of Petitioner's organization for the requisite amount of time a violation of IC 4-32-9-28.

5) Petitioner signed a lease agreement with the Lake County Board of Commissioners to conduct charity gaming from August 7 to August 9, 2003 at the Lake County Fairground. Another organization had also signed a lease to conduct charity gaming from August 1, 2003 to August 4, 2003. Therefore, starting the week of August 3rd 2003, charity gaming was to be conducted at the Lake County Fairgrounds on five (5) days that week, a violation of IC 4-32-9-20(b).

PROPOSED DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied in whole.

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 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

02970146.LOF

**LETTER OF FINDINGS NUMBER: 97-0146 ITC
GROSS INCOME TAX
For Years 1990 to 1993**

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 Taxpayer for sales to distributors.

Authority: 45 IAC 1-1-120 (1)(b); IC 6-2.1-2-2 (a) 2

Taxpayer protests subjecting income from sales to distributors to Gross income tax.

II. Gross Income Tax – Application to out-of-state Taxpayer for sales through franchisees.

Authority: 45 IAC 1-1-120 (1)(b); 45 IAC 1-1-49(1) & (2); IC 6-2.1-2-2 (a) 2; IC 6-2.1-3-3; *Tyler Pipe Industries v. Washington State Department of Revenue*, 483 U.S. 232 (1987)

Taxpayer protests subjecting income from sales through franchisee and franchisee's dealers to Gross income tax.

III. Gross Income Tax – Application to Optional Maintenance and Warranty Contracts

Authority: IC 6-2.1-2-2 (a) (2)

Taxpayer protests taxation of income from sales of an optional warranty and maintenance contract.

IV. Adjusted Gross Income Tax – Royalty Income

Authority: IC 6-3-1-20

Taxpayer protests characterizing foreign royalty income as business income.

V. Adjusted Gross Income Tax – Net Operating Losses

Authority: IC 6-3-2-2.6

Taxpayer protests the auditor's calculation of net operating losses.

VI. Gross Income Tax – Direct Sales

Authority: 45 IAC 1-1-120 (1)(b)

Taxpayer protests taxation of income from direct sales into State of Indiana.

STATEMENT OF FACTS

The taxpayer is an out of state corporation which sells residential, light commercial, and large customized heating and air conditioning systems both nationally and internationally. One special product division (hereinafter "Special division") of taxpayer's business makes direct sales into Indiana; however, the majority of taxpayer product sales within Indiana are made by two of taxpayer's product divisions. One division (hereinafter "distributor division") sells the product to distributors who in turn sell the product to independent retail dealers; the other division (hereinafter "franchise division") sells the product through franchisees and franchisees' subcontractors. Taxpayer's franchise division enters into a single contract with franchisees for the franchisees to directly or indirectly sell, install, maintain, service, and advertise taxpayer's products throughout Indiana. Franchisees and their subcontractors can also sell extended warranty and service contracts on behalf of the taxpayer with the product sales.

DISCUSSION

I. Gross Income Tax – Application to out-of-state Taxpayer for sales to distributors.

Taxpayer was assessed the tax based on IC 6-2.1-2-2(a)(2), which imposes the gross income tax on "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." The tax being assessed is based on the income to taxpayer from sales generated by orders to its out of state distributor division by independent distributors and shipped from various out of state assembly plants or distribution centers to the independent distributors by common or contract carrier

This activity constitutes an in-shipment of taxpayer products and is exempt from taxation under 45 IAC 1-1-120 (1) (b) (*repealed in 1998*) which states in relevant part:

(1) Nontaxable in-shipments

.....

(b) Sales made by a nonresident who has a business situs or business activities within the State, but the situs or activities are not significantly associated with the sales,
Any sales by taxpayer that originated at a taxpayer operation located in Indiana were reported by taxpayer. The remaining income is exempt.

FINDINGS

Taxpayer's protest is sustained.

II. Gross Income Tax – Application to out-of-state Taxpayer

Taxpayer was assessed the tax based on IC 6-2.1-2-2(a)(2), which imposes the gross income tax on “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.” The tax being assessed is based on income received from the sale by taxpayer's franchise division of products manufactured out of state and installed within and outside of the state by taxpayer franchisees and/or the franchisee's subcontractors based in Indiana.

45 IAC 1-1-120(2)(a) defines an in-shipment of goods as taxable if the sales were channeled through or connected with an Indiana business situs. 45 IAC 1-1-49(1) & (2) defines a business situs as:

... including but not limited to, the following:

- (1) Use, occupancy or operation of an office, shop, construction site, store, warehouse, factory, agency route or other place where the taxpayer's affairs are carried on;
- (2) Performance of services;

Taxpayer enters into a single contract with each of its franchisees not only for sales and delivery of its product, but also for installation, warranty repair, servicing, and advertising of taxpayer's name and product line. While taxpayer asserts the lack of an agency relationship between it and its franchisees, taxpayer fails to distinguish its sales from the performance aspects of its activities within this state. Indeed, in the franchise agreement, the taxpayer requires franchisee distributors to:

(e) Assume full responsibility either through your own organization, an independent servicing organization, or that of your dealers, *for prompt efficient servicing, at reasonable charges to any end-user having Products installed in your area regardless of who sold or installed such Products.* In connection with this you shall cause your servicing dealers to maintain adequate repair and service shop facilities. You shall additionally have them send the appropriate personnel to schools as [taxpayer] may provide to be trained in the servicing of these Products and assume full responsibility for training service personnel of your dealers. You shall also require your dealers to maintain adequate installation and service records, specifically their customers' names and addresses, the model and serial numbers of equipment sold, summaries of service calls, and you shall also maintain such records for your own sales. (*Emphasis added.*)

Taxpayer's concern is not only with the delivery of products to Indiana, but, as is indicated in the italicized material, taxpayer requires its franchisees to provide ongoing product service, maintenance, advertising, and repair for any taxpayer product.

Taxpayer further asserts that the imposition of these taxes violates IC 6-2.1-3-3, which states:

Gross income derived from commerce between the state of Indiana and either another state or foreign country is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution.

The Supreme Court affirms the constitutionality of states imposing gross income taxes on out-of-state franchisers in *Tyler Pipe Industries v. Washington State Department of Revenue*, 483 U.S. 232 (1987). The facts in *Tyler* parallel the taxpayer's situation, “Tyler maintains no office, owns no property, and has no employees residing in the State of Washington. Its solicitation of business in Washington is directed by executives who maintain their offices out-of-state and by an independent contractor located in Seattle,” *Tyler*, U.S. 232 at 249. The Supreme Court quoted in affirming the Washington State Supreme Court's finding that “the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for sales,” *Tyler*, U.S. 232 at 250. This standard was satisfied because the “sales representatives perform any local activities necessary for maintenance of Tyler Pipe's market and protection of its interests,” *Tyler*, U.S. 232 at 251. Again, taxpayer's requirements of its franchisees and their dealers require far more than the delivery of a product, instead extending to honoring warranty relationships, servicing taxpayer products, training franchisee employees, advertising, and maintaining market sales records. The Court requirements for nexus are met.

Therefore, income derived from transactions involving the delivery of products, the performance of installation, maintenance, and warranty work, and the maintenance of trained staff and commercial locations with taxpayer's name in Indiana, represents taxable Indiana source income; however, income to taxpayer from franchises located outside of the state is not taxable.

FINDINGS

Taxpayer's protest is sustained in part and denied in part.

III. Gross Income Tax – Application to Optional Maintenance and Warranty Contracts

DISCUSSION

Taxpayer's initial argument is that the sale of optional maintenance and warranty contracts by its franchisees and franchisees' subcontractors are part of interstate sales and are thus exempt. Please refer to the second issue for an analysis of the argument.

Taxpayer was assessed the tax based on IC 6-2.1-2-2(a)(2), which imposes the gross income tax on “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.” The tax being assessed is based on the income to taxpayer from the sale of maintenance and warranty contracts within the state by taxpayer franchisees’ and the franchisees’ dealers. The contracts, as noted in the Summary of Audit Report, pages 7 & 8, involve service and maintenance work by the franchisees and the franchisees’ subcontractors.

Taxpayer’s primary argument was based on Sales Tax Information Bulletin #2, August 1991. This states:

Optional warranties and maintenance agreements are not subject to tax because the purchase of the warranty or maintenance agreement is the purchase of an intangible right to have the property supplied and there is no certainty that the property will be supplied. *However, if the agreement includes a charge for property to be periodically supplied, the agreement would be subject to tax.* (Emphasis added)

Taxpayer failed to address the relevance of a Sales Tax Bulletin to a Gross tax application. Additionally, as the emphasized section notes, if the warranty included a charge for property to be periodically supplied-as the taxpayer’s maintenance contracts require- it was still a taxable transaction. Consequently the taxation of the agreement income stands.

Additionally, taxpayer notes that the auditor used sales data for one year to calculate the tax for the audits three years. To quote from the audit report, “Service Contract Revenue: Taxpayer supplied the 1993 amount and requested that it be used for the period 1990-92.” Inasmuch as the amount in question was mutually agreed on during the audit, there is no question of law presented and no change is required.

FINDINGS

Taxpayer’s protest is denied.

IV. Gross Income Tax – Royalty Income

DISCUSSION

Taxpayer is engaged in international marketing of its products. For various cultural reasons, taxpayer alters its name and product to fit the overseas market. Taxpayer argues that these changes alter the nature of its business enough to remove the overseas income from the definition of business income found in IC 6-3-1-20, which states:

Sec. 20 The 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 if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer’s regular trade or business operations.

All royalties in question arise from international transactions within taxpayer’s trade. As taxpayer notes in their appeal, their domestic trademark includes a “specific reference to ‘American’ [which] has been found to be sensitive in other countries,” and “differentiated national markets reflect disparate local architectural preferences, construction regulations and especially the very different cultural attitudes in matters of personal hygiene.” Thus, aside from these accommodations for foreign sensibilities, these activities are within the purview of taxpayer’s trade and business operations.

Taxpayer does note that a different subsidiary exists that has no similar domestic U.S. product line. Inasmuch as the wholly owned subsidiary still consists of taxpayer managed tangible and intangible property; the auditor’s conclusion that it was integral to taxpayer’s trade and business operations will stand.

FINDINGS

Taxpayer’s protest is denied.

V. Gross Income Tax -Net Operating Losses

DISCUSSION

Taxpayer asserts that IC 6-3-2-2.6(b) requires its net operating losses be increased by its recognized nonbusiness income and its foreign source dividend deduction. Taxpayer agrees that the auditor’s initial calculation of the net operating loss amounts was correct as required by IC 6-3-2-2.6(b), but objects to auditor’s refusal to add the foreign source dividends to the net operating loss denominator.

IC § 6-3-2-2.6 allows domestic dividends received to be included in the net operating loss base by reference to Internal Revenue Code Sec: 172, but the statute does not include foreign source dividends in the net operating loss base. IC 6-3-2-2.6(a) requires a four- (4) step process to calculate the net operating loss. Step 2 requires the calculations from IC 6-3-2-2.6(b) used by both the auditor and taxpayer to calculate a net operating loss amount. Step 3 requires; Enter the larger of zero (0) or the amount determined under STEP TWO. Inasmuch as the totals from step 2 are negative numbers, zero (0) is larger and was thus entered by the auditor, computationally reflecting the omission of the foreign source dividend loss by the statute’s exclusive use of IRS Code Sec: 172 for the net operating loss base calculation.

Taxpayer also noted a possible conflict with IC 6-2.1-3-3, which applies to Constitutional exemptions from gross income tax and the Foreign Commerce Clause of the U.S. Constitution. The gross income tax issue was addressed under the discussion of Issue II, please refer to the analysis related to it. The Foreign Commerce Clause deals with improper assessment of taxes, not the calculation of net operating losses; accordingly, it is not controlling on this issue.

FINDINGS

Taxpayer’s protest is denied.

VI. Gross Income Tax – Direct Sales

DISCUSSION

Taxpayer asserts that the auditor erroneously picked up sales as taxable because he confused the acronym “RPG” with “UPG” and identified sales from an out-of-state office to Indiana customers as taxable for gross income tax purposes. The sales from an out-of-state office to Indiana customers constitute an in-shipment of taxpayer products and would be exempt from taxation under 45 IAC 1-1-120 (1)(b), which states in relevant part:

(1) Nontaxable in-shipments

.....

(b) Sales made by a nonresident who has a business situs or business activities within the State, but the situs or activities are not significantly associated with the sales.

FINDINGS

Taxpayer’s protest is sustained.

DEPARTMENT OF STATE REVENUE

04-990457.LOF

LETTER OF FINDINGS NUMBER: 99-0457

Sales/Use Tax

For the Years 1992-1998

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. Tax Administration - Best information available

Authority: Ind. Code § 6-2.5-4-4; Ind. Code § 6-8.1-5-1; Ind. Code § 6-8.1-5-4

Taxpayer protests the Department’s assessment of sales tax with respect to Indiana sales at auctions, based on auditor reliance on prior year income tax returns.

II. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2(b).

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer was an operator of a motel for several years. Taxpayer did not file sales tax returns or remit sales tax for any of those years. The Department audited taxpayer for sales tax during the period in question. Taxpayer had claimed a sales tax exemption based on rentals of motel rooms for longer than thirty days. When auditor requested to review taxpayer’s records with respect to the potential sales tax, taxpayer stated that the records had been destroyed upon sale of the motel. As a result, taxpayer was assessed sales tax based on income tax returns filed by taxpayer for the prior years.

I. Tax Administration-Best information available

DISCUSSION

In general, if a person rents real estate to a person for less than thirty (30) days, the person is considered to make a retail sale. Ind. Code § 6-2.5-4-4 (a). If the rental period is greater than 30 days, the person is not making a retail sale. *Id.* Here, the crucial question for taxability of the motel rentals is the length of visitors’ stays, and whether taxpayer can verify that renters stayed for greater than 30 days.

Ind. Code § 6-8.1-5-4(a) states that:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person’s liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

In addition, Ind. Code § 6-8.1-5-1(a) states that the Department can compose tax based on the best information available to the Department.

In this case, the best information available to the Department was the taxpayer’s income tax returns for the years in which taxpayer filed income tax returns. For the other taxable years, the auditor used an average of the income from the years in which taxpayer filed returns. From this, the auditor determined that the taxpayer’s sales were those reported as income on the taxpayer’s income tax returns, or estimated to be income. “[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 the person against whom

Nonrule Policy Documents

the proposed assessment is made”, Ind. Code § 6-8.1-5-1(b), though such presumption is rebuttable by taxpayer. *Id.* Taxpayer argues that the last four years of the motel’s operation constituted rentals exempt from sales tax. At the designated time of the hearing, taxpayer was called three times, but did not answer his telephone on any of those occasions. Further, the very information that taxpayer could have used to show the length of visitors’ stays was not presented to the Department.

FINDING

Taxpayer’s protest is denied.

II. Tax Administration - Penalty

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides in 45 IAC 15-11-2:

(b) “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.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer relates that taxpayer is not a sophisticated taxpayer. While the Department is aware of this, a basic duty of care exists for all taxpayers, from individuals of the most modest means to the largest corporations. That duty is one of knowledge of tax laws, knowledge of payment and filing deadlines, and record keeping of one’s own business and personal affairs sufficient to retrace their prior financial transactions as necessary for a reasonable period of time. To impute less of a duty is to allow for carelessness or even intentional ignorance to be a defense—something that no effective legal system can permit. If a taxpayer is not certain of the scope of that duty, professional advice and even the occasional question to the Department is available. Taxpayer apparently sought professional advice prior to the operating the business; however, the advice appeared to ignore a long-standing statute. Taxpayer’s reliance on that advice in the face of a clearly contrary statute was negligent for the first three years of the period.

For the last four years of the period, taxpayer maintains that it was not subject to the tax based on its change of operations to longer-term rentals. While appropriate facts and circumstances may exist in similar cases for a waiver, particularly in the case of an isolated transaction out of many, taxpayer has not made such a showing in this case.

FINDING

Taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE

02990561P.LOF

LETTER OF FINDINGS NUMBER: 99-0561P Tax Administration—Penalty For the Years 1986-1996

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.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer had reported zero sales subject to Indiana's gross income tax for certain tax years and seriously underreported sales in other tax years. Taxpayer was aware of its duty to report such sales. Taxpayer argues that it had no intent deprive the Department of the revenue owed. Rather, taxpayer stated that the reason for the non-reporting and underreporting was due to accounting errors and misinterpretations of Indiana's corporate gross income tax statutes and regulations.

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. Taxpayer freely admits mistakes were made, but argues it did not act in a willfully negligent manner. Taxpayer outsourced its tax compliance and audit functions to a big name accounting firm. When a taxpayer relies on the expertise of an outside firm to secure the accuracy and completeness of its tax compliance and audit functions, taxpayer accepts the results, signs off on them, and presents them as true. If the accounting firm made mistakes and/or errors, taxpayer's recourse is against the accounting firm, not the State of Indiana. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

02-990599P.LOF

LETTER OF FINDINGS NUMBER: 99-0599P

Gross Income & Adjusted Gross Income 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.

ISSUES

I. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation engaged in heating, ventilation and air conditioning manufacturing and sales. Taxpayer was purchased by another company in 1995 and has since operated as a subsidiary of the company. The company assumed that the taxpayer's inventory was on consignment and therefore exempt by taxpayer's construction of Indiana case law; however, upon Department audit, company learned that the inventory was for sale to Indiana customers. Therefore, for taxable year 1995, taxpayer was assessed gross income tax and penalty. Further, upon Department audit, it was discovered that taxpayer had rented an Indiana warehouse but that the rental expense was not part of taxpayer's apportionment factors due to an error that predated the acquisition. As a result, for taxable years 1996 and 1997, taxpayer was assessed adjusted gross income tax and penalty. All other issues have been resolved with the exception of the penalty, which taxpayer protests.

I. Tax Administration - Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent (10%) negligence penalty for all taxes that the Department has imposed. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause

and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "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.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer has provided sufficient information to establish that taxpayer exhibited reasonable care under the circumstances and therefore the penalty should be waived.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-990652.LOF

LETTER OF FINDINGS NUMBER: 99-0652

SALES/USE TAX

For Years 1996 and 1997

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 – Best information available; failure to maintain adequate records

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-4(a); IC 6-8.1-5-4(c) IC 6-8.1-5-1(b).

Taxpayer argues that the proposed assessment should be reduced because, in the taxpayer's opinion, the auditor's assessment, which was based on the best information available, was unreasonable.

II. Sales/Use Tax – Credit for sales tax previously paid

Authority: None

Taxpayer requests credit for sales tax previously paid for which the taxpayer provides documentation to prove such payment.

III. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is in the business of selling trees, shrubbery, plants, flowers, and landscaping materials. Taxpayer designs landscape plans for customers and will complete the installation of all materials or will sell the materials to the customers for them to plant. Taxpayer has installed a greenhouse and grows plants for sale.

Audit revealed that taxpayer failed to document transactions that would show that it paid the appropriate tax on certain items. These items were picked up on audit, and taxpayer was assessed tax appropriately. Where records were missing or incomplete, the auditor used the best information available to estimate an appropriate amount of sales that would be subject to tax.

Taxpayer claims that it has documentation to prove it has paid sales tax in some circumstances. Taxpayer protests the best

information available audit because, in its view, the auditor grossly overestimated taxpayer's retail sales.

I. Sales/Use Tax – Best information available; failure to maintain adequate records

DISCUSSION

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. IC 6-8.1-5-1(a). Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. IC 6-8.1-5-4 (a). A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times. IC 6-8.1-5-4 (c). 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).

For 1996 and 1997, taxpayer failed to report the correct amount of taxable sales. Taxpayer had destroyed the sales invoices and monthly sales recap sheets after sales tax returns were completed. With the help of taxpayer's accountant, those records were reconstructed and the information was used to base the assessment for sales tax.

A sample month of June 1999 was used to calculate the amount of exempt sales. The percentage for that month was determined to be 11.31%, and this percentage was applied to the tax years in question. Taxpayer protests the application of this percentage as inappropriate on two bases:

- 1) Taxpayer only had the facilities to sell items at retail for a fraction of the audit period. Therefore, in taxpayer's eyes, it didn't have the capacity to make the sales the auditor claimed it made, and that the income from that time period must have been derived from service (exempt) activities.
- 2) The month of June 1999 was a statistically misleading month, as taxpayer's retail sales were abnormally high when compared to any other month during that year.
- 3) The auditor failed to account for labor-related sales, such as mowing, in arriving at taxpayer's estimated retail sales.

Taxpayer has provided the Department with records that show that a building used for equipment storage was converted into a retail shop in 1997. That year, taxpayer also had a greenhouse built that would have increased taxpayer's retail sales. Taxpayer stipulates that the shop was not fully operational until some time in 1998, but cannot substantiate that claim with evidence.

Taxpayer has also provided the Department with a sample of sales-related statistics, primarily from the 2000 tax year. Taxpayer contends that these statistics show that more than 11.31% of its sales are exempt from sales tax.

Taxpayer must overcome the burden of proving that the Department's *prima facie* evidence of a valid claim. To do so, the taxpayer must show that the Department's basis for evaluating the taxpayer's sales is wrong. Several factors should be considered in determining the best possible method of determining the sales for a taxpayer that fails to maintain adequate records.

In the case at hand, it seems prudent that, for a landscaping firm to have retail sales, that firm would greatly be aided by having a showroom to display its wares. It would also greatly benefit the firm to have a greenhouse in which to grow plants and from which those plants may be sold. Under the circumstances, it seems relevant that taxpayer did not have either of those until some point in the middle of the audit period. Taxpayer's estimated sales should reflect that fact.

In an industry that is as seasonally dependent as the landscaping industry, this would imply the need to take the good with the bad – i.e. look at the winter months along with the summer months. To take the sales of a landscaping firm during June and apply the factors derived from that month and apply it to January is unreasonable.

FINDINGS

The taxpayer is sustained, subject to audit review, to the extent that it can show that its lack of retail operations affected its retail income during the audit period, and to the extent that it can show that the Department's use of the June 1999 sales figures is misrepresentative.

II. Sales/Use Tax – Credit for sales tax previously paid

Taxpayer has delivered to the Department documents that show sales tax was previously paid on items for which it was assessed use tax. Credit shall be given for those items for which the Department has been provided substantial documentation.

FINDINGS

The taxpayer is sustained.

III. Tax Administration- Ten Percent (10%) Negligence 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.

In spite of the fact that taxpayer has raised several good points with regards to the best information available estimates, and despite the fact that taxpayer has substantiated some of its claims that it has paid sales tax on items purchased for which the auditor could previously locate no such records, the fact remains that, if not for taxpayer's failure to properly keep records, the audit would not have had to have been completed on a best information available basis. Reasonable care would also dictate that a taxpayer would keep records of sales tax paid for several years after its sales tax returns had been filed.

FINDINGS

The taxpayer is respectfully denied.

DEPARTMENT OF STATE REVENUE

04-20020010.LOF

LETTER OF FINDINGS NUMBER: 02-0010

STATE GROSS RETAIL TAX

For Years 1998 to 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail Sales Tax – Application of sales tax to payments for leased tangible personal property.

Authority: 45 IAC 2.2-4-27

Taxpayer protests the assessment of sales tax on payments made for leased tangible personal property.

II. Gross Retail Sales Tax – Assessment of sales tax on real property.

Authority: IC § 6-8.1-5-4

Taxpayer protests the assessment of sales tax on lease payments for real property.

III. Tax Administration – Waiver of Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b)

Taxpayer seeks waiver of the penalties because the tax liabilities were due to reasonable cause and not due to willful neglect.

STATEMENT OF FACTS

Taxpayer is primarily engaged in business as a motor fuel distributor and retailer. Taxpayer owns and operates retail mini marts along with a fuel distributorship. Taxpayer sells gasoline, diesel oil, furnace oil, kerosene, motor oil, and special fuels. Taxpayer also sells grocery items and sundry items. At the time of the audit all of taxpayer's business was in Indiana. Taxpayer protested the adjustments made based on taxpayer's leasing of equipment of one of their Indiana mini marts from a bank. These items included all of the store fixtures and fuel dispensing equipment. Taxpayer maintained it had paid sales tax on the initial purchase of these items and that some of these items constituted real property.

DISCUSSION

I. Gross Retail Sales Tax – Application of sales tax to payments for leased tangible personal property.

Adjustments were made based on taxpayer's leasing of equipment of one of their Indiana mini marts from a bank. These items included all of the store fixtures and fuel dispensing equipment. The assessment was based on 45 IAC 2.2-4-27 which subjects rented or leased equipment to sales tax just as the equipment would have been subject to sales tax in an equivalent sales transaction.

Taxpayer argues that the equipment in question was originally purchased by the taxpayer and was purchased subject to sales tax. The taxpayer then entered into a financing agreement with the bank, apparently in the form of the aforementioned property transfer and lease back, to improve their cash flow for normal operating expenditures. Taxpayer cites no statute, regulation, or case to establish a basis for the department to ignore the documented arrangements between the bank and taxpayer. While taxpayer asserts that this is merely a case of form over substance, the Department would note that this financial arrangement has federal and state tax ramifications for both the bank and the taxpayer, for example the lease explicitly grants the bank the tax benefits for the depreciation and amortization deductions for the property. Unilateral equitable adjustments by the Department for one party in a single area would permit both taxpayer and the bank to classify the financial activity in a contradictory fashion, maximizing the tax benefit to both parties and circumventing procedural safeguards. The Department declines to countenance this activity.

FINDINGS

Taxpayer's appeal is respectfully denied.

II. Gross Retail Sales Tax – Assessment of sales tax on real property.

Taxpayer argues that a substantial portion of the items purchased consisted of real property. Taxpayer contends that the

inferences resulting in assessment were not properly drawn. This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer provided further detail as to the percentage and type of items that it considered real property. Inasmuch as the taxpayer's original contention that sales tax was paid on the purchase of these items and the lease agreement in question specified the materials leased as service station equipment, there appeared to be a basis for granting a reduction in the department's assessment for those items sufficiently identified as real property. However, a review of the documents provided by the taxpayer- consisting of a portion of the lease with a selective and incomplete list of items acquired- is an unacceptable basis for the Department to revise its assessment.

FINDINGS

Taxpayer's appeal is denied.

III. Tax Administration – Waiver of Penalty

DISCUSSION

Finding the liabilities were "due to negligence," IC 6-8.1-10-2.1 (a)(3), the Department imposed a ten percent penalty. The term "negligence" is defined in 45 IAC 15-11-2 (b), pertinently:

"Negligence" on behalf of a taxpayer is defined as the failure to use 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.

Taxpayer entered into an agreement that explicitly requires the remittance of sales tax and failed to do so without any regulatory or statutory justification. No waiver of the penalty is appropriate.

FINDINGS

The taxpayer's appeal is denied.

DEPARTMENT OF STATE REVENUE

0220020020.LOF

LETTER OF FINDINGS NUMBER: 02-0020

Corporate Income Tax For the Tax 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. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional corporate income tax, interest, and penalty for the tax years ending June 30, 1996 through June 30, 1999 on the taxpayer.

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.

The taxpayer failed to file an amended Indiana return when its federal return was amended. The taxpayer also reported net receipts rather than gross receipts from a sale on its gross income tax return. Further, for adjusted gross income tax purposes, the taxpayer deducted losses and intercompany receipts even though it filed separately from its related Indiana corporations. These

breaches of the taxpayer's duties to file accurate returns and pay the appropriate amount of tax to the state constitutes negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220020022.LOF

LETTER OF FINDINGS NUMBER: 02-0022

Corporate 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.

ISSUES

I. Corporate Income Tax - Unitary Relationship

Authority: IC 6-8.1-5-1 (b) *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 103 S.Ct. 293 (1983); *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992), *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307 (1982).

The taxpayer protests the department's determination that it is not a unitary business.

II. Corporate Income Tax - Business Income

Authority: 45 IAC 3.1-1-153, *Hunt Corporation v. Indiana Dept. of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999).

The taxpayer protests the department's determination that its partnership distributive income is not business income.

III. Corporate Income Tax - Net Operating Loss Carryback and Carryforward

Authority: IC 6-3-2-2.6, IC 6-3-2-2.

The taxpayer protests the department's disallowance of net operating loss carryback and carryforward.

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax, interest, and penalty for the tax years ending June 30, 1996 through June 30, 1999 on three related corporations. To identify the taxpayers in the three cases, they have been denoted "taxpayer 1, taxpayer 2, and taxpayer 3." The taxpayer at issue here is taxpayer 1. The three related taxpayers formed two partnerships which own and operate two corporations providing ambulance services in Indiana, "ambulance 1 and ambulance 2."

A Delaware corporation which provides ambulance and fire services throughout the nation is the parent corporation of the consolidated group including the three taxpayers and the Indiana ambulance service corporations. Taxpayer 1 is a limited partner in the partnership owning and operating ambulance 1. Taxpayer 2 is the general partner in the partnership between taxpayer 1 and taxpayer 2 which owns and operates ambulance 1. Taxpayer 2 is also the general partner and taxpayer 3 is the limited partner in the partnership which owns and operates ambulance 2. This partnership including taxpayer 1 as a limited partner was formed on December 25, 1995 and the taxpayer became a 99% limited partner as outlined in the partnership agreement with the contribution of cash and property. Prior to the formation of the partnership, the taxpayer was operating the ambulance operation and reporting its gross receipts as a regular "C" corporation. The department has reduced the amount of partnership income distributed to the taxpayer as this amount was reduced for federal tax purposes, which results in a refund to the taxpayer. However, the department has also reclassified the distributions from the ambulance partnership to the taxpayer as nonbusiness income or loss because the department asserts that the taxpayer does not maintain a unitary relationship with the ambulance partnership. As a result, the department will not allow the taxpayer to utilize its losses as NOL deductions in past or future years. The taxpayer filed NOL carryback refund claims to utilize the NOL generated in the year ended June 30, 1997. The department has denied these refund claims due to its reclassification of the distributions. The taxpayer protested this reclassification and denial of refund on three grounds. First the taxpayer claims that it is a unitary relationship. Secondly, the taxpayer contends that even if it is not considered a unitary relationship, the income is business income. Finally, the taxpayer argues that non business income net operating losses can be carried back and forward. A hearing was held and this Letter of Findings results.

I. Corporate Income Tax - Unitary Relationship

DISCUSSION

Pursuant to IC 6-8.1-5-1 (b) all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect.

The taxpayer protests the department's determination that the taxpayer does not maintain a unitary relationship with the related

corporations. The determination of whether or not a unitary relationship exists in a partnership of corporations depends on 45 IAC 3.1-1-153(b) as follows:

If the corporate partner's activities and the partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula...

Therefore, in order to be considered a unitary operation, the taxpayer must demonstrate that the relationship between itself and the partnership meet the established standards of a unitary relationship.

The Supreme Court has considered the issue of a unitary relationship in several cases and with several analyses. The one essential characteristic in each of the cases is day-to-day operational control.. *Container Corporation of America v. Franchise Tax Board.*, 463 U.S. 159,103 S.Ct. 293 (1983).; *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992), *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307 (1982). To establish that the taxpayer has a unitary relationship with the partnership, the taxpayer must establish that it has operational control of the partnerships or that management of the partnerships is centralized with the taxpayer.

The taxpayer argues that it qualifies as a unitary relationship because it has officers and directors in common with the other corporation in the partnership, the consolidated group of companies has an Operations Manager who is responsible for the Indiana operations, there are monthly meetings of regional presidents, the corporations in the consolidated group use economies of scale in purchasing insurance and servicing of debt, and functional integration by centralized accounting and human resource benefits. These do not, however, indicate that the taxpayer has operational control of the day-to-day operations of the partnership as required by the Supreme Court.

Rather, the taxpayer is the limited partner and the other corporation is the general partner in a limited partnership. Taxpayer's argument ignores the general legal principal that a limited partnership is one in which the general partners control the business. Limited partners such as the taxpayer "contribute capital and share profits but who cannot manage the business and are liable only for the amount of their contribution." *Black's Law Dictionary*, p. 1142 (7th ed. 1999).

Along with general legal principals, the partnership agreement submitted by the taxpayer contradicts the taxpayer's arguments. Item 6 of the partnership agreement states as follows:

The General Partner shall have the full, exclusive and complete power to manage and control the business and affairs of the Partnership, all of the rights and powers provided to general partnerships under the laws of the State of Delaware, as well as any other rights and powers necessary to accomplish the purpose of this

Thus, the contract establishing the relationship of the entities indicates that general partner completely controls the actions and policies of the taxpayer. Since all authority and control is invested in the general partner, the business relationship cannot be unitary.

FINDING

The taxpayer's protest is denied.

II. Corporate Income Tax - Business Income

DISCUSSION

The department did not consider the taxpayer's derivative income from the partnership business income. The taxpayer argues that even if the taxpayers and the Indiana partnerships are not unitary in nature, the separately allocated partnership loss is still business income or loss, just from a different trade or business than that of the corporate partner. The taxpayer bases this argument on 45 IAC 3.1-1-153 as follows:

... (c) If the corporate partner's activities and the partnership's activities do not constitute a unitary business... the corporate partner's share of the partnership income attributable to Indiana shall be determined as follows:

(1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three factor formula...

(2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to formula apportionment.

... (e) After determining the amount of business income attributable to Indiana under subsection (c), the corporate partner's distributive share of such income shall be added to the corporate partner's other business income apportioned to Indiana and its nonbusiness income, if any, allocable to Indiana, in determining the corporate partner's total taxable income.

Reading these regulations together, the taxpayer argues that in Indiana a business conglomerate can be considered not a unitary concern and still have business income. The taxpayer reads these regulations and infers from the phrase "added to the corporate partner's other business income" (emphasis added) to mean that the partnership's distributive income is automatically considered business income. The taxpayer errs in this conclusion.

The Indiana Tax Court addressed this issue in *Hunt Corporation v. Indiana Dept. of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999). In *Hunt* the Court determined that a corporate partner's income from a corporate partnership should be determined by apportionment of that income at the corporate partner level when the corporate partner and the corporate partnership have a unitary relationship. The Court stated at page 776 as follows:

If the income from the partnerships constitutes business income (i.e., if the affiliated group and the partnerships are engaged in a unitary business; under section 6-3-2-2, all of that income would be subject to apportionment based on an application of the affiliated group's property, payroll, and sales factors. If the income from the partnerships constitutes non-business income for the affiliated group (i.e., if the affiliated group and the partnerships are not engaged in a unitary business), that income would be allocated to a particular jurisdiction.

The Court's reasoning is clear. All of a corporate partner's income from a corporate partnership that has a unitary relationship with that partner is business income; all of a corporate partner's income from a partnership with a non-unitary relationship is non-business income. In this case, it has been determined that the corporate partners in the corporate partnership do not have a unitary relationship. Therefore the income of the individual corporate partners is not business income.

FINDING

The taxpayer's protest is denied.

III. Corporate Income Tax - Net Operating Loss Carryback and Carryforward

DISCUSSION

Alternatively, the taxpayer contends that nonbusiness income or loss which is allocated to Indiana can be carried back and forward as a net operating loss in Indiana pursuant to IC 6-3-2-2.6 as follows:

... 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.

"Section 2 of this chapter" refers to IC 6-3-2-2, which defines "adjusted gross income derived from sources within Indiana." Section 2 provides Indiana's general rules for attribution of income among states, whether the income is business or nonbusiness income. The last paragraph of IC 6-3-2-2 provides "In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources Indiana. Therefore it is clear that a nonbusiness loss allocated to Indiana is included in the computation of the net operating loss carried to another year.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220020102.LOF

LETTER OF FINDINGS NUMBER: 02-0102

Corporate 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.

ISSUES

I. Corporate Income Tax - Unitary Relationship

Authority: IC 6-8.1-5-1 (b) *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 103 S.Ct. 293 (1983); *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992), *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307 (1982).

The taxpayer protests the department's determination that it is not a unitary business.

II. Corporate Income Tax - Business Income

Authority: IC 6-8.1-5-1 (b), 45 IAC 3.1-1-153, *Hunt Corporation v. Indiana Dept. of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999).

The taxpayer protests the department's determination that its partnership distributive income is not business income.

III. Corporate Income Tax - Net Operating Loss Carryback and Carryforward

Authority: IC 6-3-2-2.

The taxpayer protests the department's disallowance of net operating loss carryback and carryforward.

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax, interest, and penalty for the tax years ending June 30, 1996 through June 30, 1999 on three related corporations. To identify the taxpayers in the three cases, they have been denoted "taxpayer 1, taxpayer 2, and taxpayer 3." The taxpayer at issue here is taxpayer 1. The three

related taxpayers formed two partnerships which own and operate two corporations providing ambulance services in Indiana, “ambulance 1 and ambulance 2.”

A Delaware corporation which provides ambulance and fire services throughout the nation is the parent corporation of the consolidated group including the three taxpayers and the Indiana ambulance service corporations. Taxpayer 1 is a limited partner in the partnership owning and operating ambulance 1. Taxpayer 2 is the general partner in the partnership between taxpayer 1 and taxpayer 2 which owns and operates ambulance 1. Taxpayer 2 is also the general partner and taxpayer 3 is the limited partner in the partnership which owns and operates ambulance 2. This partnership including taxpayer 1 as a limited partner was formed on December 25, 1995 and the taxpayer became a 99% limited partner as outlined in the partnership agreement with the contribution of cash and property. Prior to the formation of the partnership, the taxpayer was operating the ambulance operation and reporting its gross receipts as a regular “C” corporation. The department has reduced the amount of partnership income distributed to the taxpayer as this amount was reduced for federal tax purposes, which results in a refund to the taxpayer. However, the department has also reclassified the distributions from the ambulance partnership to the taxpayer as nonbusiness income or loss because the department asserts that the taxpayer does not maintain a unitary relationship with the ambulance partnership. As a result, the department will not allow the taxpayer to utilize its losses as NOL deductions in past or future years. The taxpayer filed NOL carryback refund claims to utilize the NOL generated in the year ended June 30, 1997. The department has denied these refund claims due to its reclassification of the distributions. The taxpayer protested this reclassification and denial of refund on three grounds. First the taxpayer claims that it is a unitary relationship. Secondly, the taxpayer contends that even if it is not considered a unitary relationship, the income is business income. Finally, the taxpayer argues that non business income net operating losses can be carried back and forward. A hearing was held and this Letter of Findings results.

I. Corporate Income Tax - Unitary Relationship

DISCUSSION

Pursuant to IC 6-8.1-5-1 (b) all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect.

The taxpayer protests the department’s determination that the taxpayer does not maintain a unitary relationship with the related corporations. The determination of whether or not a unitary relationship exists in a partnership of corporations depends on 45 IAC 3.1-1-153(b) as follows:

If the corporate partner’s activities and the partnership’s activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula...

Therefore, in order to be considered a unitary operation, the taxpayer must demonstrate that the relationship between itself and the partnership meet the established standards of a unitary relationship.

The Supreme Court has considered the issue of a unitary relationship in several cases and with several analyses. The one essential characteristic in each of the cases is day-to-day operational control.. *Container Corporation of America v. Franchise Tax Board.*, 463 U.S. 159,103 S.Ct. 293 (1983).; *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992), *ASARCO, Inc. v. Idaho State Tax Comm’n*, 458 U.S. 307 (1982). To establish that the taxpayer has a unitary relationship with the partnership, the taxpayer must establish that it has operational control of the partnerships or that management of the partnerships is centralized with the taxpayer.

The taxpayer argues that it qualifies as a unitary relationship because it has officers and directors in common with the other corporation in the partnership, the consolidated group of companies has an Operations Manager who is responsible for the Indiana operations, there are monthly meetings of regional presidents, the corporations in the consolidated group use economies of scale in purchasing insurance and servicing of debt, and functional integration by centralized accounting and human resource benefits. These do not, however, indicate that the taxpayer has operational control of the day-to-day operations of the partnership as required by the Supreme Court.

Rather, the taxpayer is the limited partner and the other corporation is the general partner in a limited partnership. Taxpayer’s argument ignores the general legal principal that a limited partnership is one in which the general partners control the business. Limited partners such as the taxpayer “contribute capital and share profits but who cannot manage the business and are liable only for the amount of their contribution.” *Black’s Law Dictionary*, p. 1142 (7th ed. 1999).

Along with general legal principals, the partnership agreement submitted by the taxpayer contradicts the taxpayer’s arguments. Item 6 of the partnership agreement states as follows:

The General Partner shall have the full, exclusive and complete power to manage and control the business and affairs of the Partnership, all of the rights and powers provided to general partnerships under the laws of the State of Delaware, as well as any other rights and powers necessary to accomplish the purpose of this

Thus, the contract establishing the relationship of the entities indicates that general partner completely controls the actions and policies of the taxpayer. Since all authority and control is invested in the general partner, the business relationship cannot be unitary.

FINDING

The taxpayer’s protest is denied.

II. Corporate Income Tax - Business Income**DISCUSSION**

The department did not consider the taxpayer's derivative income from the partnership business income. The taxpayer argues that even if the taxpayers and the Indiana partnerships are not unitary in nature, the separately allocated partnership loss is still business income or loss, just from a different trade or business than that of the corporate partner. The taxpayer bases this argument on 45 IAC 3.1-1-153 as follows:

... (c) If the corporate partner's activities and the partnership's activities do not constitute a unitary business... the corporate partner's share of the partnership income attributable to Indiana shall be determined as follows:

(1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three factor formula...

(2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to formula apportionment.

... (e) After determining the amount of business income attributable to Indiana under subsection (c), the corporate partner's distributive share of such income shall be added to the corporate partner's other business income apportioned to Indiana and its nonbusiness income, if any, allocable to Indiana, in determining the corporate partner's total taxable income.

Reading these regulations together, the taxpayer argues that in Indiana a business conglomerate can be considered not a unitary concern and still have business income. The taxpayer reads these regulations and infers from the phrase "added to the corporate partner's other business income" (emphasis added) to mean that the partnership's distributive income is automatically considered business income. The taxpayer errs in this conclusion.

The Indiana Tax Court addressed this issue in *Hunt Corporation v. Indiana Dept. of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999). In *Hunt* the Court determined that a corporate partner's income from a corporate partnership should be determined by apportionment of that income at the corporate partner level when the corporate partner and the corporate partnership have a unitary relationship. The Court stated at page 776 as follows:

If the income from the partnerships constitutes business income (i.e., if the affiliated group and the partnerships are engaged in a unitary business; under section 6-3-2-2, all of that income would be subject to apportionment based on an application of the affiliated group's property, payroll, and sales factors. If the income from the partnerships constitutes non-business income for the affiliated group (i.e., if the affiliated group and the partnerships are not engaged in a unitary business), that income would be allocated to a particular jurisdiction.

The Court's reasoning is clear. All of a corporate partner's income from a corporate partnership that has a unitary relationship with that partner is business income; all of a corporate partner's income from a partnership with a non-unitary relationship is non-business income. In this case, it has been determined that the corporate partners in the corporate partnership do not have a unitary relationship. Therefore the income of the individual corporate partners is not business income.

FINDING

The taxpayer's protest is denied.

III. Corporate Income Tax - Net Operating Loss Carryback and Carryforward**DISCUSSION**

Alternatively, the taxpayer contends that nonbusiness income or loss which is allocated to Indiana can be carried back and forward as a net operating loss in Indiana pursuant to IC 6-3-2-2.6 as follows:

... 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.

"Section 2 of this chapter" refers to IC 6-3-2-2, which defines "adjusted gross income derived from sources within Indiana." Section 2 provides Indiana's general rules for attribution of income among states, whether the income is business or nonbusiness income. The last paragraph of IC 6-3-2-2 provides "In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources Indiana. Therefore it is clear that a nonbusiness loss allocated to Indiana is included in the computation of the net operating loss carried to another year.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20020318.LOF

LETTER OF FINDINGS NUMBER: 02-0318**SALES/USE TAX****For Years 1998 and 1999**

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 – Transfer of property to an exempt not-for-profit organization

Authority: None

Taxpayer protests the imposition of gross retail tax on items purchased that were subsequently turned over to a not-for-profit organization for no consideration.

II. Sales/Use Tax – Equipment used in farming

Authority: IC 6-2.5-5-2

Taxpayer protests the imposition of gross retail tax on items purchased for use in farming.

III. Sales/Use Tax – Equipment used in constructing public roadways

Authority: IC 6-2.5-5-7

Taxpayer protests the imposition of gross retail tax on items used in constructing roadways for a county municipality.

STATEMENT OF FACTS

Taxpayer is for-profit real estate developer located in Indiana. Taxpayer has purchased many items exempt from gross retail tax under the assumption that these items were exempt either as items transferred to a homeowner's association or as used in farming.

I. Sales/Use Tax – Transfer of property to an exempt not-for-profit organization

DISCUSSION

Several of the items picked up on audit as being subject to unpaid gross retail tax are contended, by taxpayer, to have been transferred to an exempt not-for-profit organization. Taxpayer believes that, because this organization would have been able to purchase said items exempt from gross retail tax, it should also be able to purchase those same items in an exempt manner. Taxpayer states that it acts as an agent for the exempt organization.

However, taxpayers may not use the exemptions of other entities; therefore, only the exempt entity may purchase items and be exempt from gross retail tax.

FINDINGS

The taxpayer is respectfully denied.

II. Sales/Use Tax – Equipment used in farming

DISCUSSION

Taxpayer claims that other items picked up on audit were purchased for use in farming. Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities. IC 6-2.5-5-2(a). According to IC 6-2.5-5-2(b), transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) The person acquiring the property acquires it for use in conjunction with the production of food or commodities for sale;
- (2) The person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food or commodity production; and
- (3) The machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

Taxpayer claims that, in its business, it purchases equipment used for farming and development. Taxpayer claims that the equipment is used for the maintenance of fields. It claims that it is in business with farmers with whom it participates in crop sharing along with sharing in the rent and expenses.

The fact that taxpayer claims no revenues from agricultural activities tends to show that taxpayer is not itself engaged in any of the activities enumerated in IC 6-2.5-5-2(b). Regardless of whether or not taxpayer shares in the revenues and expenses of farming with those who actually tend the fields, the fact remains that taxpayer itself does not do any farming. Taxpayer again is trying to avail itself of the exemptions of a third party, and again there is no exemption to the gross retail tax.

FINDINGS

The taxpayer is respectfully denied.

III. Sales/Use Tax – Equipment used in constructing public roadways

DISCUSSION

Taxpayer claims that certain items picked up on audit were used to construct roadways, curbs, paving, and drainage that were subsequently turned over to the county, which maintains them. Under IC 6-2.5-5-7, transactions involving tangible personal property are exempt from the state gross retail tax if:

- (1) The person acquiring the property is in the construction business;
- (2) The person acquiring the property acquires it for incorporation as a material or integral part of a public street or of a public

water, sewage, or other utility service;

(3) The public street or public utility service into which the property is to be incorporated is required under a subdivision plat, approved and accepted by the appropriate Indiana political subdivision; and

(4) The public street or public utility is to be publicly maintained after its completion.

Taxpayer is a real estate development group. While these groups may not directly engage in construction activities, by their very nature such groups are involved to some degree in the business of constructing homes. Therefore, taxpayer meets the first part of the statute.

Taxpayer has put into issue only those items incorporated into the roads, curbs, paving, and drainage, and these items pass the second portion of the statute. Taxpayer has provided the Department with documentation that shows that the public streets into which the property was incorporated was required under a subdivision plat, approved and accepted by an appropriate Indiana political subdivision. And finally, taxpayer has provided the Department with documentation that the public street is to be publicly maintained after its completion.

Having met all four of the requirements of the statute, taxpayer is entitled to the exemption for any items for all tangible personal property incorporated into these streets.

FINDINGS

The taxpayer is sustained.

DEPARTMENT OF STATE REVENUE

04-20020396.LOF

LETTER OF FINDINGS NUMBER: 02-0396

Gross Retail Tax

For Years 1994—1999

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.

ISSUE

I. Gross Retail Tax—Personal Computers

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-7; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4

Taxpayer protests the assessment of gross retail tax on sales of personal computers.

STATEMENT OF FACTS

Taxpayer markets personal computers, selling them to many resellers for ultimate sales to consumers and selling to corporations and other entities that use personal computers for internal purposes. According to the auditor, multiple sales and large dollar amounts to any one particular customer did not necessarily indicate a resale situation. The auditor's examination of the taxpayer's listing of sales by customer resulted in the assessment of gross retail tax on sales for which no evidence of exemption was provided. Taxpayer timely protested, supplying the Department with additional documentation, some of which the auditor accepted to reduce taxpayer's liability.

The current posture of the protest is as follows. Taxpayer is presently in bankruptcy and has an appointed bankruptcy trustee. The trustee has the authority to pursue the adjudication/settlement of this gross retail tax liability and has requested that the Department issue a Letter of Findings based on the best information available in the file to ascertain taxpayer's gross retail tax liability in the State of Indiana. Additional facts will be supplied as required.

I. Gross Retail Tax—Personal Computers

DISCUSSION

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." 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.

According to the original audit's projection agreement for the tax years at issue, taxpayer's original liability, based on records tendered to the auditor, was ascertained according to the best information available to the auditor. Taxpayer then filed a protest, submitting additional documentation, mainly exemption certificates. The auditor reviewed the supplemental documentation and arrived at a current gross retail tax liability. Pursuant to an agreement between the Indiana Department of Revenue and taxpayer's bankruptcy trustee, the taxpayer's gross retail tax liability is based upon the figure the auditor arrived at after reviewing the supplemental documentation. A penalty assessment of 10%, plus statutorily imposed interest, will be added to the bill sent to taxpayer.

FINDING

Taxpayer's protest concerning the assessment of gross retail tax on the sale of personal computers to consumers is sustained to the extent that correct documentation has been provided.

DEPARTMENT OF STATE REVENUE

0220020499;0320020500.LOF

LETTER OF FINDINGS: 02-0499; 02-0500 **Indiana Withholding Tax and Corporate Income Tax** **For the Years 1993 Through 2000**

NOTICE: Under 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income Received by Out-of-State Manufacturer – Adjusted Gross Income Tax and Withholding Tax.

Authority: 15 U.S.C.S. § 381; 14 U.S.C.S. § 381(a), (c); Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992); IC 6-3-2-1; IC 6-3-2-2(a); 45 IAC 3.1-1-38; 45 IAC 3.1-1-38(4); Schering-Plough Healthcare Products Sales Corp. v. Commonwealth, 805 A.2d 1284 (Pa. Commw. Ct. 2002).

Taxpayer argues that because it is an out-of-state vendor and because its Indiana activities do not exceed the "mere solicitation" standard, it is not subject to Indiana corporate adjusted gross income tax and, for the same reason, it was not responsible for withholding income tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state manufacturer. Taxpayer maintains an Indiana force of four resident sales persons.

In addition, taxpayer has a 79 percent interest in a related, out-of-state company which manufactures tools. Related company does not have an Indiana sales force. Instead, taxpayer's four Indiana salespersons represent both taxpayer and related company in this state. The four salespersons sell both taxpayer's products and related company's tools.

Related company pays taxpayer for the salespersons' services by means of a "cost-sharing arrangement." According to the audit report, the cost sharing arrangement is "calculated based on a formula originally developed by the taxpayer from the gross sales of the taxpayer and [related company]. The taxpayer is reimbursed through an annual management charge. An intercompany receivable/payable account is used to accomplish the reimbursement. Monies are transferred as the taxpayer deems necessary."

During the period under audit review, taxpayer did not file Indiana tax returns on the ground that its Indiana activities did not exceed the mere solicitation standard set out in Public Law 86-272.

The Department of Revenue (Department) conducted an audit review of taxpayer's business records and – in short – determined that taxpayer's activities exceeded the mere solicitation standard. The audit review determined that taxpayer should have been paying corporate income taxes during 1990 through 1992 because – during those three years – taxpayer operated as a "C" corporation. The audit review determined that taxpayer should have been withholding individual income taxes on behalf of its shareholders during 1993 through 2000 because – during those eight years – taxpayer was operating as an "S" corporation, and its income flowed directly through to taxpayer's shareholders. Accordingly, the audit review concluded that taxpayer owed additional income and withholding taxes and proposed an assessment of those taxes. The taxpayer disagreed, submitted a protest to that effect, an administrative hearing was held during which taxpayer explained the basis for the protest, and this Letter of Findings results.

DISCUSSION

I. Income Received by Out-of-State Manufacturer – Adjusted Gross Income Tax and Withholding Tax.

IC 6-3-2-1 imposes a tax on the adjusted gross income derived from "sources within Indiana." IC 6-3-2-2(a) provides that adjusted gross income derived from sources within Indiana includes "income from doing business in this state." IC 6-3-2-2(a).

45 IAC 3.1-1-38, in interpreting IC 6-3-2-2(a), provides that for apportionment purposes a taxpayer is "doing business" in Indiana if it operates a business enterprise or activity in Indiana including, but not limited to:

- (1) Maintenance of an office or other place of business in the state
- (2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods
- (3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution
- (4) Rendering services to customers in the state
- (5) Ownership, rental or operation of a business or of property (real or personal) in the state
- (6) Acceptance of orders in the state
- (7) Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L. 86-272 to tax its net income.

15 U.S.C.S. § 381 (Public Law 86-272) controls those occasions in which Indiana may properly impose a tax on the net income, derived from sources within that state, on foreign (out-of-state) taxpayers. 15 U.S.C.S. § 381 establishes the minimum standard for the imposition of a state income tax based on the solicitation of interstate sales. Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447, 2453 (1992). 15 U.S.C.S. § 381 prohibits a state 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 business activities exceed the mere solicitation of sales. 15 U.S.C.S. § 381(a), (c).

Taxpayer is a foreign corporation and receives money when its four Indiana salespersons sell taxpayer's products to Indiana customers. If taxpayer's Indiana activities were limited to selling its products, taxpayer – and by extensions its shareholders – would not be required to pay income tax because the only associated Indiana activity was the solicitation of the sales. However, taxpayer also receives money from related company when the Indiana salespersons sell related company's tools. In other words, taxpayer receives two streams of income; it receives income from sales of its product and it receives money from related company in consideration of the fact that the taxpayer's Indiana representatives act on behalf of related company.

Taxpayer argues that its Indiana activities are protected by P.L. 86-272 on the ground that its Indiana activities are limited to the solicitation of orders. In support, taxpayer cites to Schering-Plough Healthcare Products Sales Corp. v. Commonwealth, 805 A.2d 1284 (Pa. Commw. Ct. 2002). In that case, the Pennsylvania court found that the out-of-state petitioner was not subject to Pennsylvania net income tax when petitioner's only in-state activities was the solicitation of sales on behalf of its parent corporation. 805 A.2d at 1289. Interpreting the "clear and unambiguous" language of P.L. 86-272, the Pennsylvania court found that, "Congress has simply determined that there is an undue burden on interstate commerce where the only connection with the taxing state by the multistate foreign seller is solicitation of orders by salesmen or foreign contractors." *Id.*

P.L. 86-272 establishes the minimum standard for imposition of state income based upon solicitation of interstate sales. Wrigley, 112 S.Ct. 2453.

No state shall... shall have power to impose, for any taxable year..., a net income on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

- (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the state; and
- (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such person enable such customers to fill orders, resulting from such solicitation are orders described in paragraph (1). 15 U.S.C.S. § 381(a).

Insofar as taxpayer's representatives solicit sales for taxpayer's own products, P.L. 86-272 plainly protects those particular sales activities because the representatives' activities within this state on behalf of taxpayer consist solely in the solicitation of sales. In addition, there is nothing within the statute which abrogates that protection based upon the cost-sharing arrangement taxpayer entered into with related company. This is not to say that if taxpayer were providing a similar sales service on behalf of an unrelated third-party, that taxpayer would be entitled to the protection afforded under P.L. 86-272. Under such circumstances, taxpayer would plainly be rendering a "service" on behalf of the third-party, and taxpayer would be subject to tax on that service income. Such is not the situation here; taxpayer is merely soliciting sales on behalf of itself and related company.

During the years at issue, taxpayer's only Indiana activity consisted of the solicitation of sales on its behalf and on related company's behalf. Therefore, the adjusted gross income and withholding tax liabilities should be abated in their entirety.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

02-20030347.LOF

**LETTER OF FINDINGS NUMBER: 03-0347
CORPORATE INCOME TAX****For Years 1997, 1998, 1999, 2000, and 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. Gross Income Tax – Management fees****Authority:** None

Taxpayer protests the imposition of income tax on management fees at the high rate instead of the low rate of tax.

II. Gross Income Tax – Advertising fees**Authority:** 45 IAC 1.1-2-4(a)(4)(A)

Taxpayer protests the imposition of income tax on advertising fees collected from an Indiana limited partnership under the control of taxpayer.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation with retail activities outside Indiana. Taxpayer is the sole parent corporation of two other out-of-state corporations, one of which is a 99% owner in an Indiana limited partnership("partnership"), the other is a 1% owner in the same partnership. All retail operations for all of the affiliated companies are outside Indiana except for the Indiana limited partnership.

Taxpayer filed consolidated Federal income tax returns with all affiliated entities during the audit period. All state returns, including Indiana, were filed on a separate basis.

The auditor claims that taxpayer has income from management fees and co-op advertising fees charged to subsidiary companies, including the Indiana limited partnership. These fees are at the center of this protest as they were picked up on audit as being income for the taxpayer.

I. Gross Income Tax – Management fees**DISCUSSION**

Taxpayer has acquiesced on this point.

FINDINGS

Taxpayer is respectfully denied.

II. Gross Income Tax – Advertising fees**DISCUSSION**

Taxpayer claims that it does not receive fees for advertising from the Indiana limited partnership. Rather, taxpayer claims that the partnership reimburses taxpayer for the partnership's own expenses that were previously paid for by taxpayer.

Taxpayer's position is that it contracts with third party vendors for advertising services for its various retail outlets. Some of these third parties are domiciled within Indiana, but most are without. Taxpayer pays on said contract and subsequently receives a dollar-for-dollar reimbursement from the partnership along with a management fee that taxpayer claims and on which it pays income tax. Taxpayer claims that the only taxable income received in this situation is by the third party vendors who provide the advertising services.

However, the Department's position is that taxpayer is dealing firstly with its own subsidiary, partnership. The contract is between taxpayer and partnership for the sale of performance of advertising services. The provision of services of any character is subject to the gross income tax. 45 IAC 1.1-2-4(a)(4)(A). Taxpayer then contracts with a third party to physically perform the service. This does not alter the fact that taxpayer initially contracted to, and subsequently receives payment for, the service.

Taxpayer may not contract away its gross income tax liability by contracting with outside parties to perform services. The fact that a third party, not taxpayer, performed the service is irrelevant.

FINDINGS

The taxpayer is respectfully denied.

DEPARTMENT OF STATE REVENUE

0320030445P.LOF

**LETTER OF FINDINGS NUMBER: 03-0445P
Withholding Tax
For the Calendar Year 2002**

Nonrule Policy Documents

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 superceded 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 an annual withholding tax form (WH-3) for the calendar year 2002.

The taxpayer is a company located in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the late penalty should be waived as the taxpayer received the annual withholding tax form (WH-3) late on March 5, 2003. The due date of the annual withholding tax form is February 28, 2003.

The Department records show the WH-3 was mailed on October 22, 2002. Department policy with regard to a properly mailed billing by the Department states a Department billing is properly mailed if Department records show the billing was mailed to the correct address. Receipt of the billing by the taxpayer is not necessary to prove the taxpayer received the billing. As the Department records show the WH-3 was properly mailed, the taxpayer fails in demonstrating reasonable cause in filing the WH-3 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

0220030480P.LOF

LETTER OF FINDINGS NUMBER: 03-0480P

Income tax

For the Calendar Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded 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 corporate income tax return for the calendar year 2000.

The taxpayer is a company located in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the error is unusual, and, feels the dual assessment of penalty and interest is excessive with regard to the nature of the error.

The previous Chief Financial Officer (CFO) sent the intended estimated taxes for Indiana to the IRS. As work backed up and the previous CFO was not able to keep up with the work, the previous CFO was terminated. The current CFO was hired within a few days. The current CFO did not review the mail backlog for a few months due to the large amount of work that needed to be

caught up on. When the current CFO did review the mail backlog, the current CFO realized, from notices from the IRS and the Department, that the Indiana estimated taxes had been sent to the IRS. The current CFO immediately filed an amended return to the IRS, on or about May 2003. The refund was received September 2003, where upon, the Department was paid.

To continue, the taxpayer feels the dual assessment of penalty and interest is excessive in light of the fact the taxpayer never had use of the money sent to the IRS. The IRS did not pay interest on the refund.

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 as the taxpayer did not have the necessary internal controls to reveal the misdirection of the mailed funds. 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

0320040051P.LOF

LETTER OF FINDINGS NUMBER: 04-0051P

Withholding Tax

Fiscal Year ending February 3, 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 superceded 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; 45 IAC 1-1-54; West Publishing Co. v. Ind. Dept of Revenue (1988), Ind. Tax. 524 N.E.2d 1329, 1333.

The taxpayer protests the late penalty.

II. Tax Administration - Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The late penalty and interest were assessed on the late filing of an annual withholding tax return for the fiscal year ending February 3, 2001.

The taxpayer is a company located out-of-state.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was the result of misinformation from the taxpayer's accountant, and, misinformation from a Department employee.

With regard to the misinformation from the taxpayer's accountant, the taxpayer's accountant is in an agency relationship with the taxpayer, and therefore, the taxpayer is liable for the accountant's actions when the accountant acts on the behalf of the taxpayer. 45 IAC 1-1-54.

With regard to the misinformation from the Department employee, the taxpayer provides no clear evidence that the department employee in question made a misrepresentation. "The state will not be stopped in the absence of clear evidence that its agents made representations upon which the party asserting estoppel relied." West Publishing Co.v. Ind. Dept of Revenue (1988), Ind. Tax. 524 N.E.2d 1329, 1333. Thus, as the taxpayer is unable to provide clear evidence of a misrepresentation from said department employee, the taxpayer fails to establish reasonable cause for filing late on this point.

The regulation which provides the guideline for penalty is as follows:

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,

Nonrule Policy Documents

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 as (1) the taxpayer is liable for the accountant’s actions, and (2) there is no clear evidence that said department employee made a misrepresentation. As inattention is negligence and subject to penalty, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.

II. Tax Administration – Interest

Interest may not be waived according to statute. IC 6-8.1-10-1.

DEPARTMENT OF STATE REVENUE

0420040053P.LOF

LETTER OF FINDINGS NUMBER: 04-0053P

Sales & Use Tax

For the Months January, February, March, April, May, July, and August of 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 superceded 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 monthly sales tax returns for the months of January, February, March, April, May, July, and August of the year 2003.

The taxpayer is a company located out-of-state.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was unintentional and due to unawareness.

In October 2002 the taxpayer received an information letter from the Department. The taxpayer erroneously assumed the payment due dates had changed from monthly to quarterly, and therefore paid sales tax quarterly up through August 2003.

The Department points out that there was no language in the information letter which changed the due dates.

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 as the taxpayer misread the said information letter. 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

0420040072.LOF

LETTER OF FINDINGS NUMBER 04-0072

RESPONSIBLE OFFICER

SALES TAX

For Tax Periods: 2002-2003

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 specific issues.

ISSUES

Sales and Withholding Tax - Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1 (b), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995) at page 273:.

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes.

STATEMENT OF FACTS

The taxpayer was one third shareholder in a corporation that did not remit the proper amount of sales taxes to Indiana. The taxpayer was personally assessed for the taxes and protested these assessments. Taxpayer protested that he was an investor and not an officer of the corporation and that in an effort to protect his investment he had taken the other two shareholders to court and had them removed from the operations of the business.

Sales and Withholding Tax - Responsible Officer Liability

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the Taxpayer who has the burden of proving that assessment is incorrect. IC 6-8.1-5-1 (b).

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995) at page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid. The factors considered to determine whether a person has such authority are the following:

1. The person's position within the power structure of the Corporation;
2. The authority of the officer as established by the Articles of Incorporation, By-laws or employment contract; and
3. Whether the person actually exercised control over the finances of the business including control of the bank account, signing checks and tax returns or determining when and in what order to pay creditors.

Id. At 273.

The taxpayer was the primary investor in the corporation at the time of its incorporation and had significant authority by his ownership of shares in the corporation. However, he contends that he had no involvement in the day to day operations and has provided copies of relevant court orders and transcripts from the hearings on this matter that establish his position as an investor only and prove that he did not have control over the finances of the business. Based on his establishment in a contested court proceeding of his absence of control over the finances of the business, taxpayer has established that he does not meet the third factor outlined in Safayan. Taxpayer protest is sustained.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

01-20040075P.LOF

LETTER OF FINDINGS NUMBER: 04-0075P

Income Tax

For the Calendar Year 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 superceded 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 payment of an annual income tax return for the calendar year 2002.

The taxpayer is an individual residing in Indiana.

I. Tax Administration – Penalty**DISCUSSION**

The taxpayer argues the late penalty should be abated as the tax was paid with the filing of the income tax return on the extension due date of October 14, 2004.

The Department points out that 90% of the tax due is required to be paid by the original due date when an extension has been filed. IC 6-8.1-6-1. In the instant case, the tax was paid at the extension due date, six months after the original due date.

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 the tax due date. 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

03-20040088P.LOF

LETTER OF FINDINGS NUMBER: 04-0088P**Withholding Tax****For Tax Years 2000-02**

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 superceded 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—Negligence Penalty**

Authority: 45 IAC 1.1-1-24; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

As the result of an audit, the Indiana Department of Revenue (“Department”) issued proposed assessments of withholding taxes for 2000, 2001 and 2002. Taxpayer paid amounts equal to the assessments, but protested the imposition of a ten percent negligence penalty. Further facts will be provided as necessary.

I. Tax Administration—Negligence Penalty**DISCUSSION**

Taxpayer has various companies within its corporate structure which design, build, supervise and work on powerhouses, plants and other facilities located throughout the United States and the world. Taxpayer hired several contractors to work on a plant construction location in Indiana. Most of these were resident contractors, but a few were not. Taxpayer did not check with the Secretary of State’s office to determine if the nonresident contractors were registered to do business in Indiana. In the course of the audit, the Department determined that the nonresident contractors were not registered to do business in Indiana.

The Department issued proposed assessments under 45 IAC 1.1-1-24, which states:

- (a) “Withholding agent” means a person or entity required to withhold gross income taxes under IC 6-2.1-6.
- (b) The term includes a person or entity making payments to a nonresident contractor. The term also includes a prime contractor making payments to nonresident subcontractors. The following contracts are examples of service work that would require withholding on payments to nonresident contractors subject to the gross income tax:
 - (1) A construction contract of any kind.
 - (2) A contract for the performance of or participation in athletic events and exhibitions, including auto races.
 - (3) A contract for entertainment, including single entertainment events.
 - (4) A contract for the furnishing and installation of tangible personal property.

(5) A contract for leasing tangible personal property.

(c) As used in this section, "nonresident contractor" does not include a foreign corporation qualified to do business in Indiana.

In its protest letter, taxpayer states that it reviewed the contracts related to the eight largest nonresident subcontractors at issue. Taxpayer states that, based on the contracts, in some instances the contract was between a third-party general contractor and the subcontractor. Taxpayer states that in those instances the general contractor is responsible for the withholding tax.

Taxpayer states that since it would have to reimburse the general contractor for the additional withholding tax, and in order to avoid its administrative burden as well as the Department's, it paid the underlying assessments and interest. Also, taxpayer protests the ten percent (10%) negligence penalty on the grounds that the assessments were not the result of taxpayer's intentional disregard of Indiana law. Taxpayer also states that the amount of the assessments relative to the overall amount of business activity conducted is evidence that it is in general compliance.

The Department refers to 45 IAC 15-11-2(b), which 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 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.

Also, 45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer's review only included the eight (8) largest nonresident subcontractors out of thirty-three (33) listed. Even then, taxpayer only claims that some of the eight were not its responsibility. Taxpayer has not provided any documentation in support of its protest, let alone sufficient documentation to support its claim that another taxpayer is responsible for some of the withholding taxes. Therefore, taxpayer did not exercise such reasonable care, caution or diligence as would be expected of an ordinary reasonable taxpayer. Under 45 IAC 15-11-2(b), this is negligence, since the definition of negligence is the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Taxpayer's statement that it did not intentionally disregard Indiana's tax law is not relevant.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20040089P.LOF

LETTER OF FINDINGS NUMBER: 04-0089P

Income Tax

For the Years 2000-2002

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.

ISSUE

I. Tax Administration - Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is in the business of manufacturing and marketing metal building components for roofing and walls. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. The taxpayer was given ample opportunity to schedule a hearing on the protest and/or submit additional information. Since the taxpayer did neither, this finding is based on the information in the file.

I. Tax Administration - Ten Percent (10%) Negligence 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 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 taxpayer did not obtain and keep valid exemption certificates from several of its customers as clearly required by the Indiana law and regulations. The taxpayer's inattention to its duties and failure to follow the department's instructions constitute negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040114P.LOF

LETTER OF FINDINGS NUMBER: 04-0114P

Sales Tax

For the Months of December 2002, January 2003, June 2003, and August 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 superceded 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.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The late penalty and interest were assessed on the late filing of sales tax returns for the months of December 2002, January 2003, June 2003, and August 2003.

The taxpayer is a company located out-of-state.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the taxpayer was unaware of the early filing due date. The taxpayer's employee who completes the sales tax return is a new employee. The taxpayer's new employee used the coupons left by her predecessor, and, assumed the due date for filing the monthly sales tax return was the 30th of the month. Upon receiving the first proposed assessment, the taxpayer's new employee realized the due date was the 20th of the month and not the 30th of the month. With this new information, the taxpayer's new employee began filing the monthly sales tax returns on the 20th of the month, the early filing due date.

The regulation which provides the guideline for penalty is as follows:

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 as the taxpayer was unaware of the early filing due date. 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.

II. Tax Administration – Interest

Interest may not be waived according to statute. IC 6-8.1-10-1.

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68 IAC 5-3-2	A	04-102	27 IR 3109	
68 IAC 5-3-7	A	04-102	27 IR 3109	
68 IAC 6-3	N	03-204	27 IR 212	27 IR 2440
68 IAC 8-1-11	A	04-102	27 IR 3110	
68 IAC 8-2-29	A	04-102	27 IR 3110	
68 IAC 9-4-8	A	04-102	27 IR 3110	
68 IAC 10-1-5	A	04-102	27 IR 3110	
68 IAC 11-1-8	A	04-102	27 IR 3110	
68 IAC 11-3-1	A	04-102	27 IR 3110	
68 IAC 12-1-15	A	04-102	27 IR 3111	
68 IAC 14-4-8	A	04-102	27 IR 3112	
68 IAC 14-5-6	A	04-102	27 IR 3112	
68 IAC 15-1-8	A	04-102	27 IR 3112	
68 IAC 15-9-4	A	04-102	27 IR 3112	
68 IAC 15-10-4.1	A	04-102	27 IR 3113	
68 IAC 15-13-2.5	N	04-102	27 IR 3113	

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68 IAC 16-1-16	A	04-102	27 IR 3113
68 IAC 17-1-5	A	04-102	27 IR 3114
68 IAC 17-2-6	A	04-102	27 IR 3114
68 IAC 18-1-2	A	04-102	27 IR 3114
68 IAC 18-1-6	A	04-102	27 IR 3114

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 1-1-1	A	04-117	*ER (27 IR 2753)
71 IAC 1.5-1-19	A	04-21	*ER (27 IR 1911)
71 IAC 3-2-9	A	04-21	*ER (27 IR 1911)
	A	04-117	*ER (27 IR 2754)
71 IAC 3-9-4	A	04-21	*ER (27 IR 1912)
71 IAC 3.5-2-9	A	04-117	*ER (27 IR 2754)
71 IAC 4-3-15	A	04-21	*ER (27 IR 1912)
71 IAC 5-1-2	A	04-21	*ER (27 IR 1912)
71 IAC 5-1-3	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-1-2	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-1-3	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-3-3	A	04-21	*ER (27 IR 1914)
71 IAC 5.5-4-2	A	04-21	*ER (27 IR 1915)
71 IAC 6-1-3	A	04-21	*ER (27 IR 1915)
71 IAC 6-3-1	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-11	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-15	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-22	R	04-21	*ER (27 IR 1922)
71 IAC 7-1-28	A	04-21	*ER (27 IR 1918)
71 IAC 7-2-8	A	04-21	*ER (27 IR 1918)
71 IAC 7-3-6	A	03-244	*ER (27 IR 205)
71 IAC 7-3-11	A	04-21	*ER (27 IR 1918)
71 IAC 7-3-13	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-1-2	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-1-4	A	03-244	*ER (27 IR 205)
71 IAC 7.5-1-15	N	04-21	*ER (27 IR 1919)
71 IAC 7.5-6-1	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-6-3	A	03-244	*ER (27 IR 206)
71 IAC 7.5-7-5	A	04-21	*ER (27 IR 1920)
71 IAC 8-6-2	A	04-21	*ER (27 IR 1920)
71 IAC 8-11-3	A	04-21	*ER (27 IR 1920)
71 IAC 8-12	N	04-117	*ER (27 IR 2755)
71 IAC 8.5-5-2	A	04-21	*ER (27 IR 1921)
71 IAC 8.5-11-3	A	04-21	*ER (27 IR 1921)
71 IAC 8.5-12	N	04-117	*ER (27 IR 2756)
71 IAC 12-2-15	A	03-293	*ER (27 IR 896)
71 IAC 13.5-3-1	A	04-21	*ER (27 IR 1921)
71 IAC 13.5-3-2	A	04-21	*ER (27 IR 1922)
71 IAC 13.5-3-3	A	04-21	*ER (27 IR 1922)
71 IAC 13.5-3-4	A	04-21	*ER (27 IR 1922)

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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

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105 IAC 9-2-88	N	02-231	††27 IR 27	105 IAC 9-2-157	N	02-231	††27 IR 44
105 IAC 9-2-89	N	02-231	††27 IR 28	105 IAC 9-2-158	N	02-231	††27 IR 45
105 IAC 9-2-90	N	02-231	††27 IR 29	105 IAC 9-2-159	N	02-231	††27 IR 45
105 IAC 9-2-91	N	02-231	††27 IR 30	105 IAC 9-2-160	N	02-231	††27 IR 45
105 IAC 9-2-92	N	02-231	††27 IR 30	105 IAC 9-2-161	N	02-231	††27 IR 46
105 IAC 9-2-93	N	02-231	††27 IR 30	105 IAC 9-2-162	N	02-231	††27 IR 46
105 IAC 9-2-94	N	02-231	††27 IR 31	105 IAC 9-2-163	N	02-231	††27 IR 46
105 IAC 9-2-95	N	02-231	††27 IR 31	105 IAC 9-2-164	N	02-231	††27 IR 47
105 IAC 9-2-96	N	02-231	††27 IR 31	105 IAC 9-2-165	N	02-231	††27 IR 47
105 IAC 9-2-97	N	02-231	††27 IR 31	105 IAC 9-2-166	N	02-231	††27 IR 47
105 IAC 9-2-98	N	02-231	††27 IR 32	105 IAC 9-2-167	N	02-231	††27 IR 47
105 IAC 9-2-99	N	02-231	††27 IR 32	105 IAC 9-2-168	N	02-231	††27 IR 47
105 IAC 9-2-100	N	02-231	††27 IR 32	105 IAC 9-2-169	N	02-231	††27 IR 47
105 IAC 9-2-101	N	02-231	††27 IR 32	105 IAC 9-2-170	N	02-231	††27 IR 48
105 IAC 9-2-102	N	02-231	††27 IR 33	105 IAC 9-2-171	N	02-231	††27 IR 48
105 IAC 9-2-103	N	02-231	††27 IR 33	105 IAC 9-2-172	N	02-231	††27 IR 48
105 IAC 9-2-104	N	02-231	††27 IR 33	105 IAC 9-2-173	N	02-231	††27 IR 49
105 IAC 9-2-105	N	02-231	††27 IR 34	105 IAC 9-2-174	N	02-231	††27 IR 49
105 IAC 9-2-106	N	02-231	††27 IR 34	105 IAC 9-2-175	N	02-231	††27 IR 49
105 IAC 9-2-107	N	02-231	††27 IR 34	105 IAC 9-2-176	N	02-231	††27 IR 49
105 IAC 9-2-108	N	02-231	††27 IR 34	105 IAC 9-2-177	N	02-231	††27 IR 49
105 IAC 9-2-109	N	02-231	††27 IR 34	105 IAC 9-2-178	N	02-231	††27 IR 50
105 IAC 9-2-110	N	02-231	††27 IR 34	105 IAC 9-2-179	N	02-231	††27 IR 50
105 IAC 9-2-111	N	02-231	††27 IR 35	105 IAC 9-2-180	N	02-231	††27 IR 50
105 IAC 9-2-112	N	02-231	††27 IR 35	105 IAC 9-2-181	N	02-231	††27 IR 50
105 IAC 9-2-113	N	02-231	††27 IR 35	105 IAC 9-2-182	N	02-231	††27 IR 51
105 IAC 9-2-114	N	02-231	††27 IR 36	105 IAC 9-2-183	N	02-231	††27 IR 51
105 IAC 9-2-115	N	02-231	††27 IR 36	105 IAC 9-2-184	N	02-231	††27 IR 51
105 IAC 9-2-116	N	02-231	††27 IR 36	105 IAC 9-2-185	N	02-231	††27 IR 51
105 IAC 9-2-117	N	02-231	††27 IR 36	105 IAC 9-2-186	N	02-231	††27 IR 51
105 IAC 9-2-118	N	02-231	††27 IR 36	105 IAC 9-2-187	N	02-231	††27 IR 51
105 IAC 9-2-119	N	02-231	††27 IR 36	105 IAC 9-2-188	N	02-231	††27 IR 52
105 IAC 9-2-120	N	02-231	††27 IR 36	105 IAC 9-2-189	N	02-231	††27 IR 52
105 IAC 9-2-121	N	02-231	††27 IR 37	105 IAC 9-2-190	N	02-231	††27 IR 52
105 IAC 9-2-122	N	02-231	††27 IR 37	105 IAC 12-1-2	A	03-58 26 IR 3077	*AWR (27 IR 2286)
105 IAC 9-2-123	N	02-231	††27 IR 37	105 IAC 12-1-5	A	03-58 26 IR 3077	*AWR (27 IR 2286)
105 IAC 9-2-124	N	02-231	††27 IR 37	105 IAC 12-1-14.5	N	03-58 26 IR 3077	*AWR (27 IR 2286)
105 IAC 9-2-125	N	02-231	††27 IR 37	105 IAC 12-1-14.6	N	03-58 26 IR 3077	*AWR (27 IR 2286)
105 IAC 9-2-126	N	02-231	††27 IR 37	105 IAC 12-1-18	A	03-58 26 IR 3077	*AWR (27 IR 2286)
105 IAC 9-2-127	N	02-231	††27 IR 37	105 IAC 12-1-22	A	03-58 26 IR 3077	*AWR (27 IR 2286)
105 IAC 9-2-128	N	02-231	††27 IR 38	105 IAC 12-1-23	A	03-58 26 IR 3078	*AWR (27 IR 2286)
105 IAC 9-2-129	N	02-231	††27 IR 38	105 IAC 12-2-4	A	03-58 26 IR 3078	*AWR (27 IR 2286)
105 IAC 9-2-130	N	02-231	††27 IR 38	105 IAC 12-2-6	A	03-58 26 IR 3078	*AWR (27 IR 2286)
105 IAC 9-2-131	N	02-231	††27 IR 39	105 IAC 12-2-7	A	03-58 26 IR 3078	*AWR (27 IR 2286)
105 IAC 9-2-132	N	02-231	††27 IR 39	105 IAC 12-2-10	A	03-58 26 IR 3078	*AWR (27 IR 2286)
105 IAC 9-2-133	N	02-231	††27 IR 39	105 IAC 12-2-11	A	03-58 26 IR 3078	*AWR (27 IR 2286)
105 IAC 9-2-134	N	02-231	††27 IR 39	105 IAC 12-2-13	A	03-58 26 IR 3079	*AWR (27 IR 2286)
105 IAC 9-2-135	N	02-231	††27 IR 39	105 IAC 12-2-14	A	03-58 26 IR 3079	*AWR (27 IR 2286)
105 IAC 9-2-136	N	02-231	††27 IR 40	105 IAC 12-2-16	A	03-58 26 IR 3079	*AWR (27 IR 2286)
105 IAC 9-2-137	N	02-231	††27 IR 40	105 IAC 12-2-17	A	03-58 26 IR 3080	*AWR (27 IR 2286)
105 IAC 9-2-138	N	02-231	††27 IR 40	105 IAC 12-2-18	N	03-58 26 IR 3080	*AWR (27 IR 2286)
105 IAC 9-2-139	N	02-231	††27 IR 40	105 IAC 12-2-19	N	03-58 26 IR 3080	*AWR (27 IR 2286)
105 IAC 9-2-140	N	02-231	††27 IR 41	105 IAC 12-2-20	N	03-58 26 IR 3080	*AWR (27 IR 2286)
105 IAC 9-2-141	N	02-231	††27 IR 41	105 IAC 12-2-21	N	03-58 26 IR 3081	*AWR (27 IR 2286)
105 IAC 9-2-142	N	02-231	††27 IR 41	105 IAC 12-3-1	A	03-58 26 IR 3082	*AWR (27 IR 2286)
105 IAC 9-2-143	N	02-231	††27 IR 42	105 IAC 12-3-2	A	03-58 26 IR 3082	*AWR (27 IR 2286)
105 IAC 9-2-144	N	02-231	††27 IR 42	105 IAC 12-3-4	A	03-58 26 IR 3082	*AWR (27 IR 2286)
105 IAC 9-2-145	N	02-231	††27 IR 42	105 IAC 12-3-5	A	03-58 26 IR 3083	*AWR (27 IR 2286)
105 IAC 9-2-146	N	02-231	††27 IR 42	105 IAC 12-4-3	A	03-58 26 IR 3084	*AWR (27 IR 2286)
105 IAC 9-2-147	N	02-231	††27 IR 42	105 IAC 12-4-4	A	03-58 26 IR 3084	*AWR (27 IR 2286)
105 IAC 9-2-148	N	02-231	††27 IR 42	105 IAC 12-4-5	A	03-58 26 IR 3084	*AWR (27 IR 2286)
105 IAC 9-2-149	N	02-231	††27 IR 43	TITLE 170 INDIANA UTILITY REGULATORY COMMISSION			
105 IAC 9-2-150	N	02-231	††27 IR 43	170 IAC 4-1-23	A	04-68 27 IR 2765	
105 IAC 9-2-151	N	02-231	††27 IR 43	170 IAC 4-4.2	N	03-305 27 IR 2312	
105 IAC 9-2-152	N	02-231	††27 IR 43	170 IAC 7-1.1-19	A	03-193 27 IR 2309	
105 IAC 9-2-153	N	02-231	††27 IR 43	170 IAC 7-1.2-10	A	03-194 27 IR 558	27 IR 2712
105 IAC 9-2-154	N	02-231	††27 IR 44	TITLE 203 VICTIM SERVICES DIVISION			
105 IAC 9-2-155	N	02-231	††27 IR 44	203 IAC	N	04-63 27 IR 2526	
105 IAC 9-2-156	N	02-231	††27 IR 44				

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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

TITLE 250 LAW ENFORCEMENT TRAINING BOARD

250 IAC 2	N	02-339	26 IR 3679	27 IR 1552
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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 1-1-19.5	N	03-296	27 IR 1617	27 IR 3065
312 IAC 1-1-27.5	N	03-296	27 IR 1617	27 IR 3065
312 IAC 1-1-29.3	N	03-296	27 IR 1617	27 IR 3065
312 IAC 2-2-1	A	03-220	27 IR 1205	27 IR 3064
312 IAC 2-2-4	A	03-220	27 IR 1205	27 IR 3064
312 IAC 2-3-1	A	03-220	27 IR 1205	27 IR 3064
312 IAC 5-6-5	A	03-92	27 IR 220	*AWR (27 IR 2501)
312 IAC 5-6-6	A	03-29	26 IR 2660	27 IR 59
				*ERR (27 IR 2742)
				*ERR (27 IR 3078)

312 IAC 5-12.5	N	03-316	27 IR 2315	
312 IAC 6	RA	02-331	26 IR 2133	27 IR 286
312 IAC 6-4-3	A	04-4	27 IR 2316	
312 IAC 6.2	N	04-66	27 IR 3119	
312 IAC 6.5	N	04-3	27 IR 2767	
312 IAC 7	RA	02-331	26 IR 2133	27 IR 286
312 IAC 8	RA	03-315	27 IR 2339	
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 8-2-13	A	04-4	27 IR 2316	
312 IAC 9	RA	02-331	26 IR 2133	27 IR 286
312 IAC 9-1-9.5	N	03-311	27 IR 1946	
312 IAC 9-1-11.5	N	03-311	27 IR 1946	
312 IAC 9-2-11	A	03-50	26 IR 3089	27 IR 459
312 IAC 9-3-2	A	03-311	27 IR 1946	
312 IAC 9-3-3	A	03-311	27 IR 1947	
312 IAC 9-3-4	A	03-311	27 IR 1948	
312 IAC 9-3-10	A	03-311	27 IR 1949	
312 IAC 9-3-11	A	03-311	27 IR 1949	
312 IAC 9-3-12	A	03-311	27 IR 1949	
312 IAC 9-3-13	A	03-311	27 IR 1950	
312 IAC 9-3-14	A	03-311	27 IR 1950	
312 IAC 9-3-15	A	03-311	27 IR 1950	
312 IAC 9-3-17	A	03-311	27 IR 1950	
312 IAC 9-4-7	R	03-311	27 IR 1966	
312 IAC 9-4-10	A	03-311	27 IR 1951	
312 IAC 9-4-11	A	03-311	27 IR 1951	
312 IAC 9-4-14	A	03-311	27 IR 1952	
312 IAC 9-5-4	A	03-311	27 IR 1953	

312 IAC 9-5-6	A	03-311	27 IR 1953	
312 IAC 9-5-7	A	03-311	27 IR 1953	
312 IAC 9-5-9	A	03-311	27 IR 1955	
312 IAC 9-5-11	N	03-311	27 IR 1956	
312 IAC 9-6-9	A	03-311	27 IR 1957	
312 IAC 9-7-2	A	03-311	27 IR 1957	
312 IAC 9-7-6	A	03-311	27 IR 1959	
312 IAC 9-7-13	A	03-311	27 IR 1960	
312 IAC 9-10-3	A	03-35	26 IR 3374	27 IR 1165
312 IAC 9-10-4	A	03-149	27 IR 246	27 IR 1789
312 IAC 9-10-9	A	03-311	27 IR 1960	
312 IAC 9-10-9.5	N	03-311	27 IR 1961	
312 IAC 9-10-10	A	03-311	27 IR 1962	
312 IAC 9-10-13.5	N	03-311	27 IR 1963	
312 IAC 9-10-17	A	03-311	27 IR 1964	
312 IAC 9-11-1	A	03-311	27 IR 1964	
312 IAC 9-11-2	A	03-311	27 IR 1965	
312 IAC 9-11-14	A	03-311	27 IR 1965	
312 IAC 10-2-33.5	N	03-296	27 IR 1617	27 IR 3065
312 IAC 10-5-0.3	N	03-215	27 IR 1940	
312 IAC 10-5-0.6	N	03-215	27 IR 1940	
312 IAC 10-5-3	A	03-215	27 IR 1941	
312 IAC 10-5-4	A	03-215	27 IR 1941	
312 IAC 10-5-5	A	03-215	27 IR 1942	
312 IAC 10-5-6	A	03-215	27 IR 1943	
312 IAC 10-5-7	A	03-215	27 IR 1944	
312 IAC 10-5-8	A	03-215	27 IR 1945	
312 IAC 11-3-1	A	03-203	27 IR 1201	27 IR 3062
312 IAC 11-4-1	A	04-4	27 IR 2316	
312 IAC 11-4-3	A	03-203	27 IR 1202	27 IR 3063
312 IAC 11-5-1	A	03-30	26 IR 2661	27 IR 61
312 IAC 11-5-2	A	03-296	27 IR 1617	27 IR 3065
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	RA	03-315	27 IR 2339	
312 IAC 16-1-9.5	N	03-251	27 IR 1206	
312 IAC 16-1-39.5	N	03-251	27 IR 1206	
312 IAC 16-1-44.6	N	03-251	27 IR 1206	
312 IAC 16-5-14	A	04-23	27 IR 2532	
312 IAC 16-5-15	A	03-251	27 IR 1206	
312 IAC 16-5-19	A	03-251	27 IR 1207	
312 IAC 17	RA	03-315	27 IR 2339	
312 IAC 17-3-1	A	04-23	27 IR 2532	
312 IAC 17-3-2	A	04-23	27 IR 2532	
312 IAC 17-3-3	A	04-23	27 IR 2532	
312 IAC 17-3-4	A	04-23	27 IR 2533	
312 IAC 17-3-6	A	04-23	27 IR 2534	
312 IAC 17-3-8	A	04-23	27 IR 2534	
312 IAC 17-3-9	A	04-23	27 IR 2534	
312 IAC 18-3-12	A	03-214	27 IR 1203	*ARR (27 IR 2745)
312 IAC 18-3-15	N	03-213	27 IR 559	27 IR 2470
312 IAC 18-3-16	N	03-213	27 IR 560	27 IR 2471
312 IAC 18-3-17	N	03-213	27 IR 560	27 IR 2472
312 IAC 18-5-2	A	03-213	27 IR 561	27 IR 2472
312 IAC 18-5-4	A	03-91	26 IR 3375	27 IR 1166
312 IAC 19	RA	03-315	27 IR 2339	
312 IAC 19-1-3	A	03-296	27 IR 1617	27 IR 3065
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 24	RA	02-331	26 IR 2133	27 IR 286
312 IAC 25-1-8	A	03-93	27 IR 221	27 IR 2444
312 IAC 25-1-75.5	N	03-93	27 IR 222	27 IR 2445
312 IAC 25-1-155.5	N	03-93	27 IR 222	27 IR 2445
312 IAC 25-4-17	A	03-93	27 IR 222	27 IR 2445
312 IAC 25-4-44	00-285			*ERR (27 IR 1890)
312 IAC 25-4-45	A	03-93	27 IR 223	27 IR 2446
	00-285			*ERR (27 IR 1890)

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312 IAC 25-4-49	A	03-93	27 IR 224	27 IR 2447	326 IAC 2-3-2	A	03-67	27 IR 2023	
312 IAC 25-4-87	A	03-93	27 IR 225	27 IR 2448	326 IAC 2-3-3	A	03-67	27 IR 2025	
312 IAC 25-4-102	A	03-93	27 IR 226	27 IR 2449	326 IAC 2-3.2	N	03-67	27 IR 2027	
312 IAC 25-4-105.5	N	03-93	27 IR 227	27 IR 2451	326 IAC 2-3.3	N	03-67	27 IR 2032	
312 IAC 25-4-113	A	03-93	27 IR 228	27 IR 2451	326 IAC 2-3.4	N	03-67	27 IR 2033	
312 IAC 25-4-114	A	03-93	27 IR 228	27 IR 2452	326 IAC 2-5.1-1	RA	04-44	27 IR 3144	
312 IAC 25-4-115	A	03-93	27 IR 229	27 IR 2453	326 IAC 2-5.1-2	RA	04-44	27 IR 3145	
312 IAC 25-4-118	A	03-93	27 IR 230	27 IR 2454	326 IAC 2-5.1-4	A	03-67	27 IR 2041	
312 IAC 25-5-7	A	03-93	27 IR 231	27 IR 2455	326 IAC 2-5.5-1	RA	04-44	27 IR 3146	
312 IAC 25-5-16	A	03-93	27 IR 232	27 IR 2455	326 IAC 2-5.5-2	RA	04-44	27 IR 3146	
312 IAC 25-6-17	A	03-93	27 IR 233	27 IR 2457	326 IAC 2-5.5-3	RA	04-44	27 IR 3146	
312 IAC 25-6-20	A	03-93	27 IR 235	27 IR 2458	326 IAC 2-5.5-4	RA	04-44	27 IR 3147	
312 IAC 25-6-23	A	03-93	27 IR 237	27 IR 2461	326 IAC 2-5.5-5	RA	04-44	27 IR 3147	
312 IAC 25-6-25	A	03-93	27 IR 238	27 IR 2462	326 IAC 2-5.5-6	RA	04-44	27 IR 3147	
312 IAC 25-6-31	A	03-169	27 IR 248	27 IR 2713	326 IAC 2-6-1	A	01-249	24 IR 3700	*CPH (24 IR 4012)
312 IAC 25-6-66	A	03-93	27 IR 238	27 IR 2462					*CPH (27 IR 551)
312 IAC 25-6-81	A	03-93	27 IR 239	27 IR 2463					27 IR 2210
312 IAC 25-6-84	A	03-93	27 IR 241	27 IR 2465	326 IAC 2-6-2	A	01-249	24 IR 3700	*CPH (24 IR 4012)
312 IAC 25-6-130	A	03-93	27 IR 243	27 IR 2467					*CPH (27 IR 551)
312 IAC 25-7-1	A	03-93	27 IR 244	27 IR 2468					27 IR 2210
312 IAC 25-7-20	A	03-93	27 IR 246	27 IR 2470	326 IAC 2-6-3	A	01-249	24 IR 3702	*CPH (24 IR 4012)
312 IAC 25-9-5	A	03-169	27 IR 249	27 IR 2714					*CPH (27 IR 551)
312 IAC 25-9-8	A	03-169	27 IR 249	27 IR 2714					27 IR 2212
312 IAC 26	RA	03-315	27 IR 2339		326 IAC 2-6-4	A	01-249	24 IR 3703	*CPH (24 IR 4012)
TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION									*CPH (27 IR 551)
315 IAC 1	RA	04-71	27 IR 2879			A	02-337	26 IR 2005	27 IR 2213
TITLE 326 AIR POLLUTION CONTROL BOARD									*ARR (27 IR 2500)
326 IAC 1-1-3	A	02-337	26 IR 1997	*ARR (27 IR 2500)	326 IAC 2-6-5	N	01-249	24 IR 3705	*CPH (27 IR 2521)
				*CPH (27 IR 2521)					*CPH (24 IR 4012)
326 IAC 1-1-3.5	A	02-337	26 IR 1997	*ARR (27 IR 2500)					*CPH (27 IR 551)
				*CPH (27 IR 2521)					27 IR 2215
326 IAC 1-2-52	A	03-228	27 IR 3120		326 IAC 2-6.1-1	RA	04-44	27 IR 3149	
326 IAC 1-2-52.2	N	03-228	27 IR 3121		326 IAC 2-6.1-2	RA	04-44	27 IR 3149	
326 IAC 1-2-52.4	N	03-228	27 IR 3121		326 IAC 2-6.1-3	RA	04-44	27 IR 3149	
326 IAC 1-2-65	A	02-337	26 IR 1997	*ARR (27 IR 2500)	326 IAC 2-6.1-4	RA	04-44	27 IR 3150	
				*CPH (27 IR 2521)	326 IAC 2-6.1-5	RA	04-44	27 IR 3150	
326 IAC 1-2-82.5	N	03-228	27 IR 3121		326 IAC 2-6.1-6	RA	04-44	27 IR 3151	
326 IAC 1-2-90	A	02-337	26 IR 1998	*ARR (27 IR 2500)	326 IAC 2-6.1-7	RA	04-44	27 IR 3154	
				*CPH (27 IR 2521)	326 IAC 2-7-3	A	02-337	26 IR 2006	*ARR (27 IR 2500)
326 IAC 1-3-4	A	03-69	26 IR 3376	27 IR 2224	326 IAC 2-7-8	A	02-337	26 IR 2006	*CPH (27 IR 2521)
	A	03-228	27 IR 3121						*ARR (27 IR 2500)
326 IAC 1-4-1	A	03-70	26 IR 3092	27 IR 1167	326 IAC 2-7-10.5	A	03-67	27 IR 2041	*CPH (27 IR 2521)
326 IAC 2-1.1-7	A	03-67	27 IR 1981		326 IAC 2-7-11	A	03-67	27 IR 2045	*ARR (27 IR 2500)
326 IAC 2-2-1	A	03-68	27 IR 250	27 IR 2216	326 IAC 2-7-12	A	03-67	27 IR 2046	*CPH (27 IR 2521)
	A	03-67	27 IR 1983		326 IAC 2-7-18	A	02-337	26 IR 2007	*ARR (27 IR 2500)
326 IAC 2-2-2	A	03-67	27 IR 1993						*CPH (27 IR 2521)
326 IAC 2-2-3	A	03-67	27 IR 1995		326 IAC 2-8-3	A	02-337	26 IR 2008	*ARR (27 IR 2500)
326 IAC 2-2-4	A	03-67	27 IR 1995						*CPH (27 IR 2521)
326 IAC 2-2-5	A	03-67	27 IR 1996		326 IAC 2-9-1	RA	04-44	27 IR 3155	
326 IAC 2-2-6	A	03-68	27 IR 256	27 IR 2222	326 IAC 2-9-2.5	RA	04-44	27 IR 3156	
	A	03-67	27 IR 1997		326 IAC 2-9-3	RA	04-44	27 IR 3156	
326 IAC 2-2-7	A	03-67	27 IR 1998		326 IAC 2-9-4	RA	04-44	27 IR 3157	
326 IAC 2-2-8	A	03-67	27 IR 1998		326 IAC 2-9-5	RA	04-44	27 IR 3158	
326 IAC 2-2-10	A	03-67	27 IR 1999		326 IAC 2-9-6	RA	04-44	27 IR 3159	
326 IAC 2-2-12	A	03-68	27 IR 257	27 IR 2223	326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)
326 IAC 2-2-13	A	02-337	26 IR 1998	*ARR (27 IR 2500)					*CPH (27 IR 2521)
				*CPH (27 IR 2521)	326 IAC 2-9-8	RA	04-44	27 IR 3159	
326 IAC 2-2-16	A	02-337	26 IR 1999	*ARR (27 IR 2500)		A	02-337	26 IR 2010	*ARR (27 IR 2500)
				*CPH (27 IR 2521)					*CPH (27 IR 2521)
326 IAC 2-2.2	N	03-67	27 IR 2000		326 IAC 2-9-9	RA	04-44	27 IR 3160	
326 IAC 2-2.3	N	03-67	27 IR 2004			A	02-337	26 IR 2012	*ARR (27 IR 2500)
326 IAC 2-2.4	N	03-67	27 IR 2005						*CPH (27 IR 2521)
326 IAC 2-2.5	R	03-67	27 IR 2048			RA	04-44	27 IR 3162	
326 IAC 2-2.6	N	03-67	27 IR 2013		326 IAC 2-9-10	A	02-337	26 IR 2013	*ARR (27 IR 2500)
326 IAC 2-3-1	A	02-337	26 IR 2000	*ARR (27 IR 2500)					*CPH (27 IR 2521)
				*CPH (27 IR 2521)	326 IAC 2-9-11	RA	04-44	27 IR 3163	
	A	03-67	27 IR 2014		326 IAC 2-9-12	RA	04-44	27 IR 3164	

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326 IAC 2-9-13	A	02-337	26 IR 2014	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 8-10-7	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521)
	RA	04-44	27 IR 3165		326 IAC 8-11-2	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 2-9-14	RA	04-44	27 IR 3167						
326 IAC 2-10-1	RA	03-332	27 IR 2324		326 IAC 8-11-6	A	02-337	26 IR 2046	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 2-10-2.1	N	03-332	27 IR 2325						
326 IAC 2-10-3.1	N	03-332	27 IR 2325		326 IAC 8-11-7	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 2-10-4.1	N	03-332	27 IR 2325						
326 IAC 2-10-5.1	N	03-332	27 IR 2325		326 IAC 8-12-3	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 2-10-6.1	N	03-332	27 IR 2325						
326 IAC 2-11-1	RA	03-333	27 IR 2326		326 IAC 8-12-5	A	02-337	26 IR 2052	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 2-11-2	A	03-333	27 IR 2327						
326 IAC 2-11-3	RA	03-333	27 IR 2327		326 IAC 8-12-6	A	02-337	26 IR 2053	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 2-11-4	RA	03-333	27 IR 2328						
326 IAC 3-4-1	A	02-337	26 IR 2016	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 8-12-7	A	02-337	26 IR 2054	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-4-3	A	02-337	26 IR 2016	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 8-13-5	A	02-337	26 IR 2055	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-5-2	A	02-337	26 IR 2017	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 10-1-2	A	02-337	26 IR 2056	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-5-3	A	02-337	26 IR 2019	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 10-1-4	A	02-337	26 IR 2057	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-5-4	A	02-337	26 IR 2019	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 10-1-5	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-5-5	A	02-337	26 IR 2020	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 10-1-6	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-6-1	A	02-337	26 IR 2022	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 11-7-1	A	02-337	26 IR 2061	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-6-3	A	02-337	26 IR 2022	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 13-1.1-1	A	02-337	26 IR 2062	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-6-5	A	02-337	26 IR 2023	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 13-1.1-8	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-7-2	A	02-337	26 IR 2024	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 13-1.1-10	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 3-7-4	A	02-337	26 IR 2025	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 13-1.1-13	A	02-337	26 IR 2064	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 5-1-2	A	01-407	26 IR 2026	*CPH (26 IR 2391)	326 IAC 13-1.1-14	A	02-337	26 IR 2065	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 5-1-4	A	02-337	26 IR 2026	*ARR (27 IR 2500) *CPH (27 IR 2521)					
					326 IAC 13-1.1-16	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 5-1-5	A	02-337	26 IR 2027	*ARR (27 IR 2500) *CPH (27 IR 2521)					
					326 IAC 14-1-1	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 6-1-10.1	A	01-407	26 IR 1970	*CPH (26 IR 2391)					
					326 IAC 14-1-2	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 6-1-10.2	A	01-407	26 IR 1994	27 IR 61 *CPH (26 IR 2391)					
				27 IR 85	326 IAC 14-1-4	R	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 6-1-13	A	03-195	27 IR 2318						
326 IAC 7-2-1	A	02-337	26 IR 2028	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-3-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 7-4-3	A	03-195	27 IR 2319		326 IAC 14-4-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 7-4-10	A	02-337	26 IR 2029	*ARR (27 IR 2500) *CPH (27 IR 2521)					
					326 IAC 14-5-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 7-4-13	A	03-282	27 IR 2768						
326 IAC 8-1-4	A	02-337	26 IR 2030	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-7-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-4-6	A	02-337	26 IR 2032	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-8-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-4-9	A	02-337	26 IR 2035	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-8-3	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-7-7	A	02-337	26 IR 2036	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-8-4	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-9-2	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-8-5	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-9-3	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-9-5	A	02-337	26 IR 2070	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-9-4	A	02-337	26 IR 2038	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-9-7	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-9-5	A	02-337	26 IR 2040	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-9-9	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-9-6	A	02-337	26 IR 2042	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 14-10-1	A	02-337	26 IR 2072	*ARR (27 IR 2500) *CPH (27 IR 2521)

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326 IAC 23-3-7	A	02-189	26 IR 2426	27 IR 479	327 IAC 15-5-5	A	01-95	26 IR 1620	*CPH (26 IR 1961)
326 IAC 23-3-11	A	02-189	26 IR 2428	27 IR 480					*CPH (26 IR 2392)
326 IAC 23-3-12	A	02-189	26 IR 2428	27 IR 481					*CPH (26 IR 2645)
326 IAC 23-3-13	A	02-189	26 IR 2428	27 IR 481					27 IR 836
326 IAC 23-4-1	A	02-189	26 IR 2429	27 IR 481	327 IAC 15-5-6	A	01-95	26 IR 1621	*CPH (26 IR 1961)
326 IAC 23-4-2	A	02-189	26 IR 2429	27 IR 482					*CPH (26 IR 2392)
326 IAC 23-4-3	A	02-189	26 IR 2429	27 IR 482					*CPH (26 IR 2645)
326 IAC 23-4-4	A	02-189	26 IR 2430	27 IR 483					27 IR 837
326 IAC 23-4-5	A	02-189	26 IR 2431	27 IR 484					*ERR (27 IR 2284)
326 IAC 23-4-6	A	02-189	26 IR 2432	27 IR 485	327 IAC 15-5-6.5	N	01-95	26 IR 1622	*CPH (26 IR 1961)
326 IAC 23-4-7	A	02-189	26 IR 2434	27 IR 486					*CPH (26 IR 2392)
326 IAC 23-4-9	A	02-189	26 IR 2434	27 IR 487					*CPH (26 IR 2645)
326 IAC 23-4-11	A	02-189	26 IR 2435	27 IR 488					27 IR 838
326 IAC 23-4-12	A	02-189	26 IR 2435	27 IR 488					*ERR (27 IR 2284)
326 IAC 23-4-13	A	02-189	26 IR 2435	27 IR 488	327 IAC 15-5-7	A	01-95	26 IR 1625	*CPH (26 IR 1961)
326 IAC 23-5	N	02-189	26 IR 2436	27 IR 489					*CPH (26 IR 2392)
									*CPH (26 IR 2645)
									27 IR 840
									*ERR (27 IR 2284)
TITLE 327 WATER POLLUTION CONTROL BOARD					327 IAC 15-5-7.5	N	01-95	26 IR 1627	*CPH (26 IR 1961)
327 IAC 5-1-1.5	A	02-327	26 IR 3097	*CPH (26 IR 3366)					*CPH (26 IR 2392)
				27 IR 1563					*CPH (26 IR 2645)
327 IAC 5-4-3	A	01-51	26 IR 3698	*CPH (27 IR 1195)					27 IR 843
				27 IR 2225					*CPH (26 IR 1961)
327 IAC 5-4-3.1	N	01-51		†† 27 IR 2230					*CPH (26 IR 2392)
327 IAC 5-4-6				*ERR (27 IR 191)	327 IAC 15-5-8	A	01-95	26 IR 1628	*CPH (26 IR 1961)
327 IAC 15-2-3	A	01-95	26 IR 1615	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 843
				27 IR 830	327 IAC 15-5-10	A	01-95	26 IR 1629	*CPH (26 IR 1961)
327 IAC 15-2-6	A	01-95	26 IR 1615	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 844
				27 IR 830	327 IAC 15-5-11	R	01-95	26 IR 1646	*CPH (26 IR 1961)
327 IAC 15-2-8	A	01-95	26 IR 1615	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 863
				27 IR 831	327 IAC 15-5-12	N	01-95	26 IR 1629	*CPH (26 IR 1961)
327 IAC 15-2-9	A	01-95	26 IR 1615	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 844
				27 IR 831	327 IAC 15-6-1	A	01-95	26 IR 1629	*CPH (26 IR 1961)
327 IAC 15-3-1	A	01-95	26 IR 1616	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 845
				27 IR 832	327 IAC 15-6-2	A	01-95	26 IR 1629	*CPH (26 IR 1961)
327 IAC 15-3-2	A	01-95	26 IR 1616	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 845
				27 IR 832					*ERR (27 IR 2284)
	A	02-327	26 IR 3098	*CPH (26 IR 3366)	327 IAC 15-6-4	A	01-95	26 IR 1632	*CPH (26 IR 1961)
				27 IR 1563					*CPH (26 IR 2392)
327 IAC 15-3-3	A	01-95	26 IR 1617	*CPH (26 IR 1961)					*CPH (26 IR 2645)
				*CPH (26 IR 2392)					27 IR 848
				*CPH (26 IR 2645)					*ERR (27 IR 2284)
				27 IR 832	327 IAC 15-6-5	A	01-95	26 IR 1635	*CPH (26 IR 1961)
327 IAC 15-5-1	A	01-95	26 IR 1617	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 851
				27 IR 833	327 IAC 15-6-6	A	01-95	26 IR 1635	*CPH (26 IR 1961)
327 IAC 15-5-2	A	01-95	26 IR 1617	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 851
				27 IR 833	327 IAC 15-6-7	A	01-95	26 IR 1635	*CPH (26 IR 1961)
327 IAC 15-5-3	A	01-95	26 IR 1618	*CPH (26 IR 1961)					*CPH (26 IR 2392)
				*CPH (26 IR 2392)					*CPH (26 IR 2645)
				*CPH (26 IR 2645)					27 IR 851
				27 IR 834					*ERR (27 IR 2284)
327 IAC 15-5-4	A	01-95	26 IR 1619	*CPH (26 IR 1961)	327 IAC 15-6-7.3	N	01-95	26 IR 1641	*CPH (26 IR 1961)
				*CPH (26 IR 2392)					*CPH (26 IR 2392)
				*CPH (26 IR 2645)					*CPH (26 IR 2645)
				27 IR 834					27 IR 857
				*ERR (27 IR 2284)					*ERR (27 IR 2285)

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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	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) 27 IR 1874
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	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) 27 IR 1875
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	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) 27 IR 1875
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	329 IAC 3.1-10-2	A	02-160	27 IR 912	*CPH (26 IR 1962) *CPH (26 IR 2647) *CPH (26 IR 3074) *CPH (26 IR 3367) *CPH (26 IR 3672) 27 IR 1876
327 IAC 15-13				*ERR (27 IR 2285) *ERR (27 IR 191)					
327 IAC 15-14	N	02-327	26 IR 3098	*CPH (26 IR 3366) 27 IR 1563	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
327 IAC 15-15	N	01-51	26 IR 3701	*CPH (27 IR 1195) 27 IR 2230					
TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD									
328 IAC 1-1-2	A	02-204	27 IR 2778	*CPH (27 IR 3095)					
328 IAC 1-1-3	A	02-204	27 IR 2778	*CPH (27 IR 3095)					
328 IAC 1-1-4	A	02-204	27 IR 2778	*CPH (27 IR 3095)					
328 IAC 1-1-5.1	A	02-204	27 IR 2778	*CPH (27 IR 3095)					
328 IAC 1-1-7.5	N	02-204	27 IR 2779	*CPH (27 IR 3095)					
328 IAC 1-1-8	R	02-204	27 IR 2797	*CPH (27 IR 3095)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
328 IAC 1-1-8.3	N	02-204	27 IR 2779	*CPH (27 IR 3095)					
328 IAC 1-1-8.5	A	02-204	27 IR 2779	*CPH (27 IR 3095)					
328 IAC 1-1-9	A	02-204	27 IR 2779	*CPH (27 IR 3095)					
328 IAC 1-1-10	A	02-204	27 IR 2779	*CPH (27 IR 3095)					
328 IAC 1-2-1	A	02-204	27 IR 2779	*CPH (27 IR 3095)					
328 IAC 1-2-3	A	02-204	27 IR 2780	*CPH (27 IR 3095)					
328 IAC 1-3-1	A	02-204	27 IR 2780	*CPH (27 IR 3095)					
328 IAC 1-3-1.3	N	02-204	27 IR 2780	*CPH (27 IR 3095)					
328 IAC 1-3-1.6	N	02-204	27 IR 2781	*CPH (27 IR 3095)					
328 IAC 1-3-2	A	02-204	27 IR 2781	*CPH (27 IR 3095)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
328 IAC 1-3-3	A	02-204	27 IR 2781	*CPH (27 IR 3095)					
328 IAC 1-3-4	A	02-204	27 IR 2783	*CPH (27 IR 3095)					
328 IAC 1-3-5	A	02-204	27 IR 2784	*CPH (27 IR 3095)					
328 IAC 1-3-6	A	02-204	27 IR 2791	*CPH (27 IR 3095)					
328 IAC 1-4-1	A	02-204	27 IR 2791	*CPH (27 IR 3095)					
328 IAC 1-4-3	A	02-204	27 IR 2794	*CPH (27 IR 3095)					
328 IAC 1-4-4	N	02-204	27 IR 2795	*CPH (27 IR 3095)					
328 IAC 1-5-1	A	02-204	27 IR 2795	*CPH (27 IR 3095)					
328 IAC 1-5-2	A	02-204	27 IR 2796	*CPH (27 IR 3095)					
328 IAC 1-5-3	A	02-204	27 IR 2796	*CPH (27 IR 3095)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
328 IAC 1-6-1	A	02-204	27 IR 2796	*CPH (27 IR 3095)					
328 IAC 1-6-2	A	02-204	27 IR 2796	*CPH (27 IR 3095)					
328 IAC 1-7-2	A	02-204	27 IR 2797	*CPH (27 IR 3095)					
328 IAC 1-7-3	R	02-204	27 IR 2797	*CPH (27 IR 3095)					
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) 27 IR 1874	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)

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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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-1-41.5	N	01-161	27 IR 3209 26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-3-1	A	01-161	27 IR 3183 26 IR 1216	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-1-42.1	R	01-161	27 IR 3179 26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-3-2	N	01-161	27 IR 3184 26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-1-47	A	01-161	27 IR 3209 26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-3.1-1	A	01-161	27 IR 3187 26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-1-47.1	A	01-161	27 IR 3179 26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-3.1-2	A	01-161	27 IR 3187 26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-2-1	A	01-161	27 IR 3179 26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-3.1-3	A	01-161	27 IR 3187 26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-2-2	A	01-161	27 IR 3179 26 IR 1214	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-3.1-4	A	01-161	27 IR 3188 26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
			27 IR 3182					27 IR 3188	

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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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
			27 IR 3189					27 IR 3192	
			27 IR 3190					27 IR 3196	
			27 IR 3191					27 IR 3196	
			27 IR 3209					27 IR 3199	
			27 IR 3209					27 IR 3209	

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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) 27 IR 1793	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) 27 IR 1794
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) 27 IR 1793	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) 27 IR 1795
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) 27 IR 1793	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) 27 IR 1795
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) 27 IR 1793	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) 27 IR 1795
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) 27 IR 1793	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) 27 IR 1795
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) 27 IR 1793	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) 27 IR 1795
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 10-2-111.5	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) 27 IR 1795
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) 27 IR 1794	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) 27 IR 1795
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) 27 IR 1794	329 IAC 10-2-115	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) *CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) *CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) 27 IR 1796
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) 27 IR 1794	329 IAC 10-2-116	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3903) *CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) *CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) 27 IR 1796
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) 27 IR 1873	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) 27 IR 1796
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) 27 IR 1794	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) 27 IR 1873

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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) 27 IR 1873	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 10-2-130	A	01-288	26 IR 1655	*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) 27 IR 1797
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) 27 IR 1796	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) 27 IR 1797
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) 27 IR 1796	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) 27 IR 1797
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 10-2-187.5	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) 27 IR 1797
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 10-2-197.1	A	01-288	26 IR 1656	*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) 27 IR 1796	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 10-2-147.2	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 10-2-201.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
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) 27 IR 1873	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) 27 IR 1873
329 IAC 10-2-151	A	00-185		† 27 IR 1796	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) 27 IR 1873
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) 27 IR 1796	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) 27 IR 1797
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) 27 IR 1797	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) 27 IR 1798
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) 27 IR 1797	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) 27 IR 1798
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 10-5-1	A	01-288	26 IR 1656	*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) 27 IR 1873					

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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) 27 IR 1799	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) 27 IR 1806
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 10-13-6	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) 27 IR 1806
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 10-14-1	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) 27 IR 1807
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 10-14-2	A	01-288	26 IR 1661	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) *CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671) *CPH (27 IR 208) 27 IR 1808
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 10-15-1	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) 27 IR 1809
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 10-15-2	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) 27 IR 1810
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 10-15-5	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) 27 IR 1810
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) 27 IR 1799	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) 27 IR 1810
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) 27 IR 1801	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) 27 IR 1812
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) 27 IR 1801	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) 27 IR 1813
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) 27 IR 1802	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) 27 IR 1814
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) 27 IR 1803	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) 27 IR 1814
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) 27 IR 1804					
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) 27 IR 1804					
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) 27 IR 1806					

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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) 27 IR 1815	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) 27 IR 1825
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) 27 IR 1817	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) 27 IR 1825
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) 27 IR 1818	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) 27 IR 1825
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) 27 IR 1819	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 10-19-1	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) 27 IR 1819	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) 27 IR 1826
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) 27 IR 1821	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) 27 IR 1830
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) 27 IR 1821	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) 27 IR 1835
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) 27 IR 1822	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) 27 IR 1838
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) 27 IR 1823	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) 27 IR 1840
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) 27 IR 1824	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) 27 IR 1841
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 10-21-9	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) 27 IR 1842
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) 27 IR 1824	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) 27 IR 1843

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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) 27 IR 1845	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) 27 IR 1860
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) 27 IR 1849	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) 27 IR 1861
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) 27 IR 1850	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 10-21-17	N	00-185		†† 27 IR 1855	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 10-22-2	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) 27 IR 1855	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) 27 IR 1862
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) 27 IR 1856	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) 27 IR 1862
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) 27 IR 1856	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 10-22-6	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) 27 IR 1856	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) 27 IR 1863
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) 27 IR 1857	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) 27 IR 1864
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) 27 IR 1858	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) 27 IR 1864
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) 27 IR 1859	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) 27 IR 1870
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) 27 IR 1859	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) 27 IR 1871
					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) 27 IR 1871

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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) 27 IR 1872	329 IAC 12-8-4	A	01-288	26 IR 1672	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) *CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-2-19.5	N	01-288	26 IR 1665	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH				
329 IAC 11-2-39	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 1-3-22	A	03-9	26 IR 3108	27 IR 490
329 IAC 11-2-44	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 1-3-30	A	02-323	26 IR 3102	27 IR 87
329 IAC 11-3-2	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 1-3-31	N	02-323	26 IR 3104	27 IR 89
329 IAC 11-6-1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 1-3-32	N	02-323	26 IR 3104	27 IR 90
329 IAC 11-7	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 1-5-1	A	03-9	26 IR 3108	27 IR 491
329 IAC 11-8-2	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 1-6-2	A	02-323	26 IR 3105	27 IR 90
329 IAC 11-8-2.5	N	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 1-6-3	A	02-323	26 IR 3105	27 IR 90
329 IAC 11-8-3	A	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 2-7-2.4	N	02-323	26 IR 3106	27 IR 92
329 IAC 11-9-6	N	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 2-7-2.5	N	02-323	26 IR 3107	27 IR 92
329 IAC 11-13-4	A	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 2-7-3	A	02-323	26 IR 3107	27 IR 92
329 IAC 11-13-6	A	01-288	26 IR 1668	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 7-3.5-16	A	04-15	27 IR 2328	
329 IAC 11-15-1	A	01-288	26 IR 1668	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 7-5-15.1	A	04-16	27 IR 2797	
329 IAC 11-19-2	A	01-288	26 IR 1669	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 7-5-22	A	04-16	27 IR 2798	
329 IAC 11-19-3	A	01-288	26 IR 1670	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 9-2.1-1	A	04-15	27 IR 2329	
329 IAC 11-20-1	A	01-288	26 IR 1670	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	345 IAC 9-10.5-2	N	04-15	27 IR 2329	
329 IAC 11-21-4	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	TITLE 357 INDIANA PESTICIDE REVIEW BOARD				
329 IAC 11-21-5	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	357 IAC 1-11	N	02-332	26 IR 3109	*CPH (26 IR 3673) *AROC (27 IR 1652) 27 IR 1877
329 IAC 11-21-6	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES				
329 IAC 11-21-7	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	405 IAC 1-8-2	A	03-164	26 IR 3929	*NRA (27 IR 1194) 27 IR 2247
329 IAC 11-21-8	A	01-288	26 IR 1672	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)	405 IAC 1-8-3	A	03-164	26 IR 3929	*NRA (27 IR 1194) 27 IR 2247
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405 IAC 2-10-7	A	03-134	26 IR 3707	*AROC (27 IR 2080) *NRA (27 IR 3094)
405 IAC 2-10-7.1	N	03-134	26 IR 3707	*AROC (27 IR 2080) *NRA (27 IR 3094)
405 IAC 2-10-8	A	03-134	26 IR 3708	*AROC (27 IR 2080) *NRA (27 IR 3094)
405 IAC 2-10-9	A	03-134	26 IR 3708	*AROC (27 IR 2080) *NRA (27 IR 3094)
405 IAC 2-10-10	R	03-134	26 IR 3709	*AROC (27 IR 2080) *NRA (27 IR 3094)
405 IAC 2-10-11	N	03-134	26 IR 3709	*AROC (27 IR 2080) *NRA (27 IR 3094)
405 IAC 5-3-13	A	03-66	26 IR 3381	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550) *ARR (27 IR 1576) *NRA (27 IR 1612) 27 IR 2244
405 IAC 5-19-3	A	03-207	27 IR 267	*AROC (27 IR 2342)
405 IAC 5-20-1	A	03-184	27 IR 259	*NRA (27 IR 1194) *ARR (27 IR 1891) 27 IR 2476
405 IAC 5-20-2	A	03-184	27 IR 260	*NRA (27 IR 1194) *ARR (27 IR 1891) 27 IR 2476
405 IAC 5-20-3.1	N	03-184	27 IR 260	*NRA (27 IR 1194) *ARR (27 IR 1891) 27 IR 2477
405 IAC 5-20-4	A	03-184	27 IR 261	*NRA (27 IR 1194) *ARR (27 IR 1891) 27 IR 2477
405 IAC 5-20-7	A	03-184	27 IR 261	*NRA (27 IR 1194) *ARR (27 IR 1891) 27 IR 2478
405 IAC 5-21-1	A	03-66	26 IR 3381	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550) *ARR (27 IR 1576) *NRA (27 IR 1612) 27 IR 2245
405 IAC 5-21-7	A	03-66	26 IR 3382	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550) *ARR (27 IR 1576) *NRA (27 IR 1612) 27 IR 2245
405 IAC 5-21-8	N	03-66	26 IR 3382	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550) *ARR (27 IR 1576) *NRA (27 IR 1612) 27 IR 2245
405 IAC 5-24-7	A	03-206	27 IR 266	*NRA (27 IR 1194) 27 IR 2252
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410 IAC 16.2-3.1-2	A	03-297	27 IR 2536		460 IAC 6-6-3	A	02-326	26 IR 2670	27 IR 107
410 IAC 16.2-3.1-3	A	03-275	27 IR 2051		460 IAC 6-7-2	A	02-326	26 IR 2671	27 IR 107
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410 IAC 16.2-3.1-14	A	03-275	27 IR 2056		460 IAC 6-9-7	N	02-326	26 IR 2673	27 IR 109
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410 IAC 16.2-5-1.2	A	03-275	27 IR 2060		460 IAC 6-15-2	A	03-123	26 IR 3935	27 IR 2724
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511 IAC 1-3-1	A	03-185	27 IR 270	
	A	04-101	27 IR 3305	
511 IAC 1-9	RA	04-47	27 IR 2879	
511 IAC 6-7-1	RA	04-47	27 IR 2879	
511 IAC 6-7-6	RA	04-47	27 IR 2879	
511 IAC 6-7-6.1	A	03-150	26 IR 3938	*ARR (27 IR 1185)
	A	03-150	27 IR 1211	
511 IAC 6-7-6.5	A	04-36	27 IR 2552	
511 IAC 6.1-1-2	A	03-219	27 IR 561	
511 IAC 6.1-2-2.5	RA	04-47	27 IR 2879	
511 IAC 6.1-5-4	RA	04-47	27 IR 2879	
511 IAC 6.1-5.1-2	A	04-36	27 IR 2553	
511 IAC 6.1-5.1-3	A	04-36	27 IR 2553	
511 IAC 6.1-5.1-4	A	04-36	27 IR 2554	
511 IAC 6.1-5.1-5	A	04-36	27 IR 2555	
511 IAC 6.1-5.1-6	A	04-36	27 IR 2555	
511 IAC 6.1-5.1-8	A	04-36	27 IR 2556	
511 IAC 6.1-5.1-9	A	03-151	26 IR 3939	
	A	04-36	27 IR 2557	
511 IAC 6.1-5.1-10.1	A	03-151	26 IR 3940	
	A	04-22	27 IR 2550	
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	
511 IAC 8	RA	04-47	27 IR 2879	
TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD				
514 IAC	N	03-298	27 IR 1634	
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	03-320	27 IR 2558	
515 IAC 1-4-2	A	03-320	27 IR 2558	
515 IAC 1-7	N	02-314	26 IR 1254	*ARR (26 IR 3346) 27 IR 501
515 IAC 4	N	03-135	27 IR 925	27 IR 3066
515 IAC 8	N	03-10	26 IR 2437	27 IR 166 *ERR (27 IR 538)
515 IAC 8-1-23	A	03-321	27 IR 2330	
515 IAC 8-1-42	A	03-321	27 IR 2330	
515 IAC 9	N	03-11	26 IR 2451	*CPH (26 IR 2648) 27 IR 1169
515 IAC 9-1-22	A	03-322	27 IR 2331	
515 IAC 12	N	03-65	26 IR 3943	*I (27 IR 2727)
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 1-1-11	RA	04-54	27 IR 2880	*CPH (27 IR 3096)
540 IAC 1-1-15	RA	03-112	26 IR 3754	27 IR 570
540 IAC 1-1-17	RA	04-54	27 IR 2880	*CPH (27 IR 3096)
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 1-8-8	RA	03-112	26 IR 3754	27 IR 570
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

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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) *CPH (27 IR 1196) 27 IR 2496
550 IAC 7	N	03-100	26 IR 3710	*CPH (27 IR 1196) 27 IR 2495

TITLE 610 DEPARTMENT OF LABOR

610 IAC 4-2-1	A	03-36	26 IR 2463	27 IR 1879
610 IAC 4-2-11	R	03-36	26 IR 2464	27 IR 1879
610 IAC 4-6-11	A	03-37	26 IR 2464	27 IR 1879
610 IAC 4-6-13	R	03-253	27 IR 565	27 IR 2728
610 IAC 4-6-23	A	03-252	27 IR 564	27 IR 2728

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

646 IAC 3-1-12	N	03-317	27 IR 2858	
646 IAC 3-1-13	N	03-317	27 IR 2858	
646 IAC 3-4-11	N	03-317	27 IR 2858	
646 IAC 3-5-1	A	03-317	27 IR 2859	

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1-5.1	A	03-186	27 IR 932	*AROC (27 IR 1652)
655 IAC 1-2.1-2	A	03-186	27 IR 934	*AROC (27 IR 1652)
655 IAC 1-2.1-3	A	03-186	27 IR 934	*AROC (27 IR 1652)
655 IAC 1-2.1-6.1	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.2	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.3	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.4	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-12	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-14	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-15	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-19	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-19.1	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-20	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-23	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-23.1	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24.1	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24.2	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24.3	N	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-2.1-88	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-1	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-2	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-4	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-5	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-7	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)
655 IAC 1-4-1	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-4-2	A	03-186	27 IR 940	*AROC (27 IR 1652)

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

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) 27 IR 1299
675 IAC 13-1-5	RA	03-48	26 IR 2693	*CPH (27 IR 551) 27 IR 1299
675 IAC 13-1-9.5	RA	03-48	26 IR 2693	*CPH (27 IR 551) 27 IR 1299
675 IAC 13-1-9.6	RA	03-48	26 IR 2693	*CPH (27 IR 551) 27 IR 1299
675 IAC 13-1-28	RA	03-48	26 IR 2693	*CPH (27 IR 551) 27 IR 1299
675 IAC 14-4.2-1	A	03-71	26 IR 3712	27 IR 2253
675 IAC 14-4.2-2	A	03-71	26 IR 3712	27 IR 2253
675 IAC 14-4.2-3	A	03-71	26 IR 3714	27 IR 2254
675 IAC 14-4.2-6	A	03-71	26 IR 3715	27 IR 2256

675 IAC 14-4.2-7	A	03-71	26 IR 3719	27 IR 2260
675 IAC 14-4.2-9	A	03-71	26 IR 3719	27 IR 2260
675 IAC 14-4.2-13.5	N	03-71	26 IR 3719	27 IR 2260
675 IAC 14-4.2-15.5	N	03-71	26 IR 3719	27 IR 2260
675 IAC 14-4.2-19.5	N	03-71	26 IR 3720	27 IR 2260
675 IAC 14-4.2-20.5	A	03-71	26 IR 3720	27 IR 2261
675 IAC 14-4.2-21	A	03-71	26 IR 3720	27 IR 2261
675 IAC 14-4.2-22	A	03-71	26 IR 3721	27 IR 2262
675 IAC 14-4.2-26.5	N	03-71	26 IR 3722	27 IR 2263
675 IAC 14-4.2-27.5	A	03-71	26 IR 3722	27 IR 2263
675 IAC 14-4.2-29	A	03-71	26 IR 3722	27 IR 2263
675 IAC 14-4.2-30	A	04-8	27 IR 2333	
675 IAC 14-4.2-31	A	03-71	26 IR 3722	27 IR 2263
675 IAC 14-4.2-34	A	03-71	26 IR 3723	27 IR 2264
675 IAC 14-4.2-37.5	N	03-71	26 IR 3724	27 IR 2265
675 IAC 14-4.2-45.3	N	03-71	26 IR 3724	27 IR 2265
675 IAC 14-4.2-46.8	N	03-71	26 IR 3724	27 IR 2265
675 IAC 14-4.2-49.1	N	03-71	26 IR 3724	27 IR 2265
675 IAC 14-4.2-49.3	N	03-71	26 IR 3724	27 IR 2265
675 IAC 14-4.2-52	A	03-71	26 IR 3725	27 IR 2266
675 IAC 14-4.2-53	A	03-71	26 IR 3725	27 IR 2266
675 IAC 14-4.2-53.7	N	03-71	26 IR 3725	27 IR 2266
675 IAC 14-4.2-61	A	03-71	26 IR 3726	27 IR 2267
675 IAC 14-4.2-63	A	03-71	26 IR 3726	27 IR 2267
675 IAC 14-4.2-69.5	N	03-71	26 IR 3726	27 IR 2267
675 IAC 14-4.2-69.6	N	03-71		†27 IR 2267
675 IAC 14-4.2-71	A	03-71	26 IR 3726	27 IR 2268
675 IAC 14-4.2-73.5	N	03-71	26 IR 3727	27 IR 2268
675 IAC 14-4.2-77.6	N	03-71	26 IR 3727	27 IR 2268
675 IAC 14-4.2-77.7	N	03-71	26 IR 3727	27 IR 2268
675 IAC 14-4.2-81.2	N	03-71	26 IR 3727	27 IR 2268
675 IAC 14-4.2-81.3	N	03-71	26 IR 3727	27 IR 2269
675 IAC 14-4.2-81.7	N	03-71	26 IR 3727	27 IR 2269
675 IAC 14-4.2-82	A	03-71	26 IR 3727	27 IR 2269
675 IAC 14-4.2-83	A	03-71	26 IR 3728	27 IR 2269
675 IAC 14-4.2-89.2	N	03-71	26 IR 3728	27 IR 2269
	A	04-8	27 IR 2333	
675 IAC 14-4.2-89.6	A	03-71	26 IR 3728	27 IR 2269
675 IAC 14-4.2-89.7	R	03-71	26 IR 3737	27 IR 2278
675 IAC 14-4.2-89.8	A	03-71	26 IR 3728	27 IR 2270
675 IAC 14-4.2-89.9	A	03-71	26 IR 3728	27 IR 2270
675 IAC 14-4.2-89.10	R	03-71	26 IR 3737	27 IR 2278
675 IAC 14-4.2-89.11	R	03-71	26 IR 3737	27 IR 2278
675 IAC 14-4.2-95	A	03-71	26 IR 3729	27 IR 2270
675 IAC 14-4.2-96.2	N	03-71	26 IR 3729	27 IR 2270
675 IAC 14-4.2-97.5	N	03-71	26 IR 3729	27 IR 2270
675 IAC 14-4.2-97.9	N	03-71	26 IR 3729	27 IR 2270
675 IAC 14-4.2-107	A	03-71	26 IR 3729	27 IR 2271
675 IAC 14-4.2-112.5	N	03-71	26 IR 3735	27 IR 2277
675 IAC 14-4.2-117	A	03-71	26 IR 3736	27 IR 2277
675 IAC 14-4.2-171.5	N	03-71	26 IR 3736	27 IR 2277
675 IAC 14-4.2-174.5	N	03-71	26 IR 3736	27 IR 2277
675 IAC 14-4.2-177.5	N	03-71	26 IR 3736	27 IR 2277
675 IAC 14-4.2-189	A	03-71	26 IR 3736	27 IR 2277
675 IAC 14-4.2-189.2	N	03-71	26 IR 3736	27 IR 2277
675 IAC 14-4.2-191.4	A	03-71	26 IR 3736	27 IR 2278
675 IAC 14-4.2-192	R	03-71	26 IR 3737	
675 IAC 17-1.6-12	A	03-71	26 IR 3737	27 IR 2278
675 IAC 17-1.6-16	A	03-71	26 IR 3737	27 IR 2278
675 IAC 19-3-4	A	03-71	26 IR 3737	27 IR 2278
675 IAC 22-2.2-3	RA	04-19	27 IR 2339	
675 IAC 22-2.2-4	RA	04-19	27 IR 2339	
675 IAC 22-2.2-5	RA	04-19	27 IR 2339	
675 IAC 22-2.2-6	RA	04-19	27 IR 2339	
675 IAC 22-2.2-7	RA	04-19	27 IR 2339	
675 IAC 22-2.2-8	RA	04-19	27 IR 2339	
675 IAC 22-2.2-9	RA	04-19	27 IR 2339	
675 IAC 22-2.2-10	RA	04-19	27 IR 2339	
675 IAC 22-2.2-11	RA	04-19	27 IR 2339	

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675 IAC 22-2.2-12	RA	04-19	27 IR 2339		760 IAC 1-50-13.5	A	03-160	27 IR 273	27 IR 1571
675 IAC 22-2.2-13	RA	04-19	27 IR 2339		760 IAC 1-57-1	A	03-7	26 IR 3398	27 IR 505
675 IAC 22-2.2-15	RA	04-19	27 IR 2340		760 IAC 1-57-2	A	03-7	26 IR 3398	27 IR 505
675 IAC 22-2.2-16	RA	04-19	27 IR 2340		760 IAC 1-57-3	A	03-7	26 IR 3398	27 IR 505
675 IAC 22-2.2-17	RA	04-19	27 IR 2340		760 IAC 1-57-4	A	03-7	26 IR 3399	27 IR 506
675 IAC 22-2.2-18	RA	04-19	27 IR 2340		760 IAC 1-57-5	A	03-7	26 IR 3399	27 IR 506
675 IAC 22-2.2-21	RA	04-19	27 IR 2340		760 IAC 1-57-6	A	03-7	26 IR 3400	27 IR 507
675 IAC 22-2.2-22	RA	04-19	27 IR 2340		760 IAC 1-57-7	R	03-7	26 IR 3408	27 IR 515
675 IAC 22-2.2-23	RA	04-19	27 IR 2340		760 IAC 1-57-8	A	03-7	26 IR 3401	27 IR 508
675 IAC 22-2.2-24	RA	04-19	27 IR 2340						*ERR (27 IR 1575)
675 IAC 22-2.2-25	RA	04-19	27 IR 2340		760 IAC 1-57-9	A	03-7	26 IR 3405	27 IR 512
675 IAC 22-2.2-49.5	R	04-56	27 IR 2864		760 IAC 1-57-10	A	03-7	26 IR 3407	27 IR 514
675 IAC 22-2.2-107.1	R	04-56	27 IR 2864						*ERR (27 IR 1575)
675 IAC 22-2.2-134.5	R	04-56	27 IR 2864		760 IAC 1-60-3	A	03-258	27 IR 2070	27 IR 2729
675 IAC 22-2.2-183	RA	04-19	27 IR 2340		760 IAC 1-60-5	A	03-258	27 IR 2072	27 IR 2730
	R	04-56	27 IR 2864		760 IAC 1-69	N	03-8	26 IR 3945	27 IR 872
675 IAC 22-2.2-221.5	R	04-56	27 IR 2864		760 IAC 1-70	N	04-39	27 IR 2560	
675 IAC 22-2.2-240.1	R	04-56	27 IR 2864		760 IAC 2-1-1	A	03-303	27 IR 3306	
675 IAC 22-2.2-241.1	R	04-56	27 IR 2864		760 IAC 2-2-1.5	N	03-303	27 IR 3306	
675 IAC 22-2.2-243.1	R	04-56	27 IR 2864		760 IAC 2-2-3.1	N	03-303	27 IR 3307	
675 IAC 22-2.2-245.2	R	04-56	27 IR 2864		760 IAC 2-2-3.2	N	03-303	27 IR 3307	
675 IAC 22-2.2-245.5	R	04-56	27 IR 2864		760 IAC 2-2-3.3	N	03-303	27 IR 3307	
675 IAC 22-2.2-365.2	R	04-56	27 IR 2864		760 IAC 2-2-3.4	N	03-303	27 IR 3307	
675 IAC 22-2.2-365.5	R	04-56	27 IR 2864		760 IAC 2-2-3.5	N	03-303	27 IR 3307	
675 IAC 22-2.2-368.1	R	04-56	27 IR 2864		760 IAC 2-2-3.6	N	03-303	27 IR 3307	
675 IAC 22-2.2-369.5	R	04-56	27 IR 2864		760 IAC 2-2-3.7	N	03-303	27 IR 3307	
675 IAC 22-2.2-378.5	R	04-56	27 IR 2864		760 IAC 2-2-3.8	N	03-303	27 IR 3308	
675 IAC 22-2.2-412.5	R	04-56	27 IR 2864		760 IAC 2-2-8	A	03-303	27 IR 3308	
675 IAC 22-2.2-437.5	R	04-56	27 IR 2864		760 IAC 2-3-1	A	03-303	27 IR 3308	
675 IAC 22-2.2-437.7	R	04-56	27 IR 2864		760 IAC 2-3-2	A	03-303	27 IR 3308	
675 IAC 22-2.2-443.5	R	04-56	27 IR 2864		760 IAC 2-3-4	A	03-303	27 IR 3309	
675 IAC 22-2.2-511.1	R	04-56	27 IR 2864		760 IAC 2-3-6	A	03-303	27 IR 3310	
675 IAC 22-2.2-515.1	R	04-56	27 IR 2864		760 IAC 2-3-7	N	03-303	27 IR 3310	
675 IAC 22-2.2-540	R	04-56	27 IR 2864		760 IAC 2-3-8	N	03-303	27 IR 3311	
675 IAC 22-2.3-18				*ERR (27 IR 3078)	760 IAC 2-4-1	A	03-303	27 IR 3311	
675 IAC 22-2.3-29.5	N	04-56	27 IR 2860		760 IAC 2-4-2	N	03-303	27 IR 3312	
675 IAC 22-2.3-35.5	N	04-56	27 IR 2860		760 IAC 2-7-1	A	03-303	27 IR 3313	
675 IAC 22-2.3-36	A	04-56	27 IR 2860		760 IAC 2-8-1	A	03-303	27 IR 3314	
675 IAC 22-2.3-36.3	N	04-56	27 IR 2861		760 IAC 2-8-2	A	03-303	27 IR 3314	
675 IAC 22-2.3-36.4	N	04-56	27 IR 2861		760 IAC 2-8-3	A	03-303	27 IR 3314	
675 IAC 22-2.3-36.6	N	04-56	27 IR 2863		760 IAC 2-8-4	A	03-303	27 IR 3315	
675 IAC 22-2.3-36.8	N	04-56	27 IR 2863		760 IAC 2-8-6	N	03-303	27 IR 3316	
675 IAC 22-2.3-111				*ERR (27 IR 3078)	760 IAC 2-9-1	A	03-303	27 IR 3316	
675 IAC 22-2.3-140.5	N	04-56	27 IR 2863		760 IAC 2-10-1	A	03-303	27 IR 3316	
675 IAC 22-2.3-147.5	N	04-56	27 IR 2863		760 IAC 2-13-1	A	03-303	27 IR 3317	
675 IAC 22-2.3-147.6	N	04-56	27 IR 2863		760 IAC 2-15-1	A	03-303	27 IR 3317	
675 IAC 22-2.3-148	A	04-56	27 IR 2864		760 IAC 2-15.5	N	03-303	27 IR 3319	
675 IAC 22-2.3-148.5	N	04-56	27 IR 2864		760 IAC 2-16-1	A	03-303	27 IR 3320	
675 IAC 22-2.3-237.5	N	04-56	27 IR 2864		760 IAC 2-16.1	N	03-303	27 IR 3320	
675 IAC 22-2.3-284				*ERR (27 IR 3078)	760 IAC 2-17-1	A	03-303	27 IR 3323	
675 IAC 22-2.3-298.5	N	04-56	27 IR 2864		760 IAC 2-18-1	A	03-303	27 IR 3325	
675 IAC 22-2.3-304.5	N	04-56	27 IR 2864		760 IAC 2-19-2	A	03-303	27 IR 3325	
675 IAC 22-2.3-305				*ERR (27 IR 3078)	760 IAC 2-19.5	N	03-303	27 IR 3325	
TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD					760 IAC 2-20-10	A	03-303	27 IR 3329	
685 IAC 1	RA	04-124	27 IR 3343		760 IAC 2-20-31.1	A	03-303	27 IR 3329	
TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS					760 IAC 2-20-34	A	03-303	27 IR 3329	
750 IAC 1-1-1	A	04-46		*ER (27 IR 2297)	760 IAC 2-20-35	A	03-303	27 IR 3332	
TITLE 760 DEPARTMENT OF INSURANCE					760 IAC 2-20-36.1	A	03-303	27 IR 3332	
760 IAC 1-21-2	A	02-299	26 IR 1724	*AROC (26 IR 3427)	760 IAC 2-20-36.2	A	03-303	27 IR 3333	
760 IAC 1-21-5	A	02-299	26 IR 1724	*AROC (26 IR 3427)	760 IAC 2-20-37.2	A	03-303	27 IR 3334	
760 IAC 1-21-8	A	02-299	26 IR 1724	*AROC (26 IR 3427)	760 IAC 2-20-37.3	N	03-303	27 IR 3334	
760 IAC 1-50-2	A	03-160	27 IR 271	27 IR 1568	760 IAC 2-20-38.1	A	03-303	27 IR 3334	
760 IAC 1-50-3	A	03-160	27 IR 271	27 IR 1569	760 IAC 2-20-42	A	03-303	27 IR 3335	
760 IAC 1-50-4	A	03-160	27 IR 272	27 IR 1569	TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS				
760 IAC 1-50-5	A	03-160	27 IR 272	27 IR 1569	804 IAC 1.1-1-1	A	03-20	26 IR 3136	27 IR 180
760 IAC 1-50-7	A	03-160	27 IR 273	27 IR 1570					
760 IAC 1-50-13	A	03-160	27 IR 273	27 IR 1570					

TITLE 808 STATE BOXING COMMISSION

808 IAC 1-3-6	A	03-226	27 IR 2563
808 IAC 1-5-1	A	03-226	27 IR 2563
808 IAC 1-5-2	A	03-226	27 IR 2563
808 IAC 2-1-5	A	03-226	27 IR 2564
808 IAC 2-1-12	A	03-226	27 IR 2564
808 IAC 2-7-14	A	03-226	27 IR 2564
808 IAC 2-8-7	R	03-226	27 IR 2566
808 IAC 2-9-5	A	03-226	27 IR 2564
808 IAC 2-12-0.5	N	03-227	27 IR 2566
808 IAC 2-12-2	N	03-227	27 IR 2567
808 IAC 2-12-3	N	03-227	27 IR 2567
808 IAC 2-12-4	N	03-227	27 IR 2567
808 IAC 2-12-5	N	03-227	27 IR 2567
808 IAC 2-12-6	N	03-227	27 IR 2567
808 IAC 2-12-7	N	03-227	27 IR 2568
808 IAC 2-12-8	N	03-227	27 IR 2568
808 IAC 2-18-1	A	03-226	27 IR 2565
808 IAC 2-22-1	A	03-226	27 IR 2565

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 6-1-3	A	03-21	26 IR 3137	*AROC (26 IR 3426) 27 IR 516
820 IAC 6-3	N	03-21	26 IR 3137	*AROC (26 IR 3426) 27 IR 516

TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 1-1-3	A	03-73	26 IR 3408	*CPH (26 IR 3904) 27 IR 2278
828 IAC 1-1-6	A	03-73	26 IR 3409	*CPH (26 IR 3904) 27 IR 2279
828 IAC 1-1-7	A	03-73	26 IR 3409	*CPH (26 IR 3904) 27 IR 2279
828 IAC 1-1-12	A	03-73	26 IR 3409	*CPH (26 IR 3904) 27 IR 2279
828 IAC 1-2-3	A	03-73	26 IR 3409	*CPH (26 IR 3904) 27 IR 2279
828 IAC 1-2-6	A	03-73	26 IR 3410	*CPH (26 IR 3904) 27 IR 2280
828 IAC 1-2-7	A	03-73	26 IR 3410	*CPH (26 IR 3904) 27 IR 2280
828 IAC 1-2-12	A	03-73	26 IR 3410	*CPH (26 IR 3904) 27 IR 2280
828 IAC 1-5-6	N	03-162	27 IR 2334	

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-1	RA	04-6	27 IR 2340	
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 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

836 IAC 1-1-1	A	03-188	27 IR 1212
836 IAC 1-1-2	A	03-188	27 IR 1215
836 IAC 1-1-3	A	03-188	27 IR 1216
836 IAC 1-1-4	N	03-188	27 IR 1217
836 IAC 1-1-5	N	03-188	27 IR 1217
836 IAC 1-1-6	N	03-188	27 IR 1219
836 IAC 1-1-7	N	03-188	27 IR 1220
836 IAC 1-1-8	N	03-188	27 IR 1220
836 IAC 1-2-1	A	03-188	27 IR 1221

836 IAC 1-2-2	A	03-188	27 IR 1222
836 IAC 1-2-3	A	03-188	27 IR 1222
836 IAC 1-2-5	N	03-188	27 IR 1225
836 IAC 1-3-1	A	03-188	27 IR 1225
836 IAC 1-3-2	A	03-188	27 IR 1226
836 IAC 1-3-3	A	03-188	27 IR 1226
836 IAC 1-3-5	A	03-188	27 IR 1228
836 IAC 1-3-6	A	03-188	27 IR 1229
836 IAC 1-4-1	A	03-188	27 IR 1230
836 IAC 1-4-2	A	03-188	27 IR 1230
836 IAC 1-11-1	A	03-188	27 IR 1231
836 IAC 1-11-2	A	03-188	27 IR 1231
836 IAC 1-11-3	A	03-188	27 IR 1232
836 IAC 1-11-4	A	03-188	27 IR 1234
836 IAC 1-12	N	03-188	27 IR 1235
836 IAC 2-1-1	A	03-188	27 IR 1239
836 IAC 2-2-1	A	03-188	27 IR 1240
836 IAC 2-2-2	A	03-188	27 IR 1243
836 IAC 2-2-3	A	03-188	27 IR 1244
836 IAC 2-2-4	N	03-188	27 IR 1245
836 IAC 2-4-1-1	A	03-188	27 IR 1245
836 IAC 2-4-1-2	A	03-188	27 IR 1246
836 IAC 2-7-1	R	03-188	27 IR 1283
836 IAC 2-7-2-1	A	03-188	27 IR 1247
836 IAC 2-7-2-2	A	03-188	27 IR 1250
836 IAC 2-7-2-3	A	03-188	27 IR 1250
836 IAC 2-7-2-4	N	03-188	27 IR 1252
836 IAC 2-11-1	R	03-188	27 IR 1283
836 IAC 2-14-1	A	03-188	27 IR 1252
836 IAC 2-14-2	A	03-188	27 IR 1253
836 IAC 2-14-3	A	03-188	27 IR 1253
836 IAC 2-14-5	A	03-188	27 IR 1255
836 IAC 3-1-1	A	03-188	27 IR 1256
836 IAC 3-2-1	A	03-188	27 IR 1256
836 IAC 3-2-2	A	03-188	27 IR 1258
836 IAC 3-2-3	A	03-188	27 IR 1258
836 IAC 3-2-4	A	03-188	27 IR 1259
836 IAC 3-2-5	A	03-188	27 IR 1260
836 IAC 3-2-6	A	03-188	27 IR 1261
836 IAC 3-2-7	A	03-188	27 IR 1261
836 IAC 3-3-1	A	03-188	27 IR 1262
836 IAC 3-3-2	A	03-188	27 IR 1263
836 IAC 3-3-3	A	03-188	27 IR 1264
836 IAC 3-3-4	A	03-188	27 IR 1264
836 IAC 3-3-5	A	03-188	27 IR 1266
836 IAC 3-3-6	A	03-188	27 IR 1266
836 IAC 3-3-7	A	03-188	27 IR 1267
836 IAC 3-5-1	A	03-188	27 IR 1267
836 IAC 4-1-1	A	03-188	27 IR 1267
836 IAC 4-2-1	A	03-188	27 IR 1270
836 IAC 4-2-2	A	03-188	27 IR 1270
836 IAC 4-2-3	A	03-188	27 IR 1271
836 IAC 4-2-4	A	03-188	27 IR 1272
836 IAC 4-3-2	A	03-188	27 IR 1272
836 IAC 4-3-3	A	03-188	27 IR 1273
836 IAC 4-4-1	A	03-188	27 IR 1273
836 IAC 4-4-2	A	03-188	27 IR 1274
836 IAC 4-4-3	A	03-188	27 IR 1275
836 IAC 4-5-2	A	03-188	27 IR 1275
836 IAC 4-6-1	R	03-188	27 IR 1283
836 IAC 4-7-1	A	03-188	27 IR 1276
836 IAC 4-7-2	A	03-188	27 IR 1276
836 IAC 4-7-3	A	03-188	27 IR 1277
836 IAC 4-7-3.5	A	03-188	27 IR 1277
836 IAC 4-7-4	A	03-188	27 IR 1278
836 IAC 4-7.1-1	A	03-188	27 IR 1278
836 IAC 4-7.1-2	A	03-188	27 IR 1278
836 IAC 4-7.1-3	A	03-188	27 IR 1279
836 IAC 4-7.1-4	A	03-188	27 IR 1280

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848 IAC 1-2-8	A	04-65	27 IR 2868
848 IAC 1-2-8.5	N	04-65	27 IR 2868
848 IAC 1-2-9	A	04-65	27 IR 2869
848 IAC 1-2-10	A	04-65	27 IR 2869
848 IAC 1-2-12	A	04-65	27 IR 2870
848 IAC 1-2-13	A	04-65	27 IR 2870
848 IAC 1-2-14	A	04-65	27 IR 2870
848 IAC 1-2-16	A	04-65	27 IR 2871
848 IAC 1-2-17	A	04-65	27 IR 2872
848 IAC 1-2-18	A	04-65	27 IR 2872
848 IAC 1-2-19	A	04-65	27 IR 2873
848 IAC 1-2-20	A	04-65	27 IR 2873
848 IAC 1-2-21	A	04-65	27 IR 2873
848 IAC 1-2-22	A	04-65	27 IR 2874
848 IAC 1-2-23	A	04-65	27 IR 2874
848 IAC 1-2-24	A	04-65	27 IR 2874
848 IAC 5-1-1	A	03-34	26 IR 3947
848 IAC 5-1-3	A	03-34	26 IR 3948

839 IAC 1-3-2	A	02-270	26 IR 871 26 IR 3411	*ARR (26 IR 1945) 27 IR 517
839 IAC 1-4-5	A	02-270	26 IR 871 26 IR 3411	*ARR (26 IR 1945) 27 IR 518
839 IAC 1-5-1	A	02-270	26 IR 872 26 IR 3412	*ARR (26 IR 1945) 27 IR 518
839 IAC 1-5-1.5	N	02-270	26 IR 874 26 IR 3414	*ARR (26 IR 1945) 27 IR 520

840 IAC 1-1-6	A	03-189	27 IR 566	27 IR 1880
840 IAC 1-2-1	A	03-190	27 IR 566	27 IR 1881

844 IAC 4-4.5-12	A	03-325	27 IR 2334	27 IR 3072
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 6-1-2	A	03-262	27 IR 1284	
844 IAC 6-1-4	A	03-261	27 IR 1635	*CPH (27 IR 2300)
844 IAC 6-3-1	A	03-261	27 IR 1636	*CPH (27 IR 2300)
844 IAC 6-3-2	A	03-261	27 IR 1636	*CPH (27 IR 2300)
844 IAC 6-3-4	A	03-261	27 IR 1637	*CPH (27 IR 2300)
844 IAC 6-3-5	A	03-261	27 IR 1637	*CPH (27 IR 2300)
844 IAC 6-3-6	N	03-261	27 IR 1638	*CPH (27 IR 2300)
844 IAC 6-4-3	A	03-261	27 IR 1638	*CPH (27 IR 2300)
844 IAC 6-6-1	R	03-261	27 IR 1642	*CPH (27 IR 2300)
844 IAC 6-6-2	R	03-261	27 IR 1642	*CPH (27 IR 2300)
844 IAC 6-6-3	A	03-261	27 IR 1638	*CPH (27 IR 2300)
844 IAC 6-6-4	A	03-261	27 IR 1639	*CPH (27 IR 2300)
844 IAC 6-7-2	A	03-261	27 IR 1639	*CPH (27 IR 2300)
844 IAC 10-4-1	A	03-329	27 IR 2568	

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	02-341	26 IR 2682	27 IR 525
845 IAC 1-5-2.1	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

848 IAC 1-1-2.1	A	04-65	27 IR 2865
848 IAC 1-2-1	A	04-65	27 IR 2866
848 IAC 1-2-5	A	04-65	27 IR 2866
848 IAC 1-2-6	A	04-65	27 IR 2867
848 IAC 1-2-7	A	04-65	27 IR 2868

856 IAC 1-27-1	A	03-191	27 IR 276	27 IR 1574
856 IAC 1-33-1	A	03-154	26 IR 3949	
			27 IR 274	*ARR (27 IR 1185)
	A	03-326	27 IR 2073	27 IR 3073
856 IAC 1-33-1.5	N	03-154	27 IR 274	*ARR (27 IR 1185)
	N	03-326	27 IR 2073	27 IR 3073
856 IAC 1-33-2	A	03-154	26 IR 3949	
			27 IR 275	*ARR (27 IR 1185)
	A	03-326	27 IR 2073	27 IR 3073
856 IAC 1-33-4	A	03-154	26 IR 3950	
			27 IR 275	*ARR (27 IR 1185)
	A	03-326	27 IR 2074	27 IR 3074
856 IAC 1-33-5	N	03-154	27 IR 275	*ARR (27 IR 1185)
	N	03-326	27 IR 2074	27 IR 3074
856 IAC 2-7	N	02-258	26 IR 1725	27 IR 181

858 IAC 2-1-1	A	03-281	27 IR 1285	27 IR 2731
858 IAC 2-1-2	A	03-281	27 IR 1286	27 IR 2731
858 IAC 2-1-3	A	03-281	27 IR 1286	27 IR 2731
858 IAC 2-1-4	A	03-281	27 IR 1286	27 IR 2732

862 IAC 1-1-3 A 03-313 27 IR 2074

864 IAC 1.1-2-2	A	03-125	26 IR 3737	27 IR 874
864 IAC 1.1-2-4	A	03-301	27 IR 2569	
864 IAC 1.1-12-1	A	03-301	27 IR 2569	
864 IAC 1.1-12-2	N	03-301	27 IR 2570	
864 IAC 1.1-14	N	03-125	26 IR 3739	27 IR 875

865 IAC 1-7-3	A	03-22	26 IR 3950	27 IR 1882
865 IAC 1-10-23	R	03-22	26 IR 3958	27 IR 1889
865 IAC 1-10-24	R	03-22	26 IR 3958	27 IR 1889
865 IAC 1-11-1	A	03-300	27 IR 2570	
865 IAC 1-12-2	A	03-22	26 IR 3951	27 IR 1882
865 IAC 1-12-3	A	03-22	26 IR 3952	27 IR 1883
865 IAC 1-12-5	A	03-22	26 IR 3952	27 IR 1884
865 IAC 1-12-6	A	03-22	26 IR 3953	27 IR 1884
865 IAC 1-12-7	A	03-22	26 IR 3953	27 IR 1884
865 IAC 1-12-9	A	03-22	26 IR 3954	27 IR 1885
865 IAC 1-12-10	A	03-22	26 IR 3954	27 IR 1885
865 IAC 1-12-11	A	03-22	26 IR 3954	27 IR 1886
865 IAC 1-12-12	A	03-22	26 IR 3954	27 IR 1886
865 IAC 1-12-13	A	03-22	26 IR 3955	27 IR 1887
865 IAC 1-12-14	A	03-22	26 IR 3956	27 IR 1888

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865 IAC 1-12-18	A	03-22	26 IR 3956	27 IR 1888	872 IAC 1-3-3.3	A	04-98	27 IR 3336	
865 IAC 1-13-4	A	03-41	26 IR 3739	27 IR 875	872 IAC 1-3-16	A	04-5	27 IR 2335	
865 IAC 1-13-5	A	03-187	27 IR 943	27 IR 2732	872 IAC 1-6	N	03-270	27 IR 2571	
				*ERR (27 IR 2744)					
865 IAC 1-13-7	A	03-41	26 IR 3739	27 IR 875	TITLE 876 INDIANA REAL ESTATE COMMISSION				
865 IAC 1-13-20	R	03-41	26 IR 3740	27 IR 876	876 IAC 1-1-19	A	03-124	26 IR 3744	27 IR 877
865 IAC 1-14-13	A	03-41	26 IR 3740	27 IR 876	876 IAC 1-4-1	A	03-42	26 IR 3142	27 IR 186
865 IAC 1-14-14	A	03-41	26 IR 3740	27 IR 876	876 IAC 1-4-2	A	03-42	26 IR 3142	27 IR 186
865 IAC 1-14-15	A	03-41	26 IR 3740	27 IR 876	876 IAC 2-18	N	03-256	27 IR 2575	
865 IAC 1-14-20	R	03-41	26 IR 3740	27 IR 876	876 IAC 3-2-7	A	03-273	27 IR 1642	27 IR 2740
						A	03-255	27 IR 2574	
TITLE 868 STATE PSYCHOLOGY BOARD					876 IAC 3-3-3	A	03-23	26 IR 3415	27 IR 530
868 IAC 2	N	03-60	26 IR 3741	*CPH (27 IR 905)	876 IAC 3-3-4	A	03-23	26 IR 3416	27 IR 531
				*AROC (27 IR 1300)	876 IAC 3-3-5	A	03-23	26 IR 3417	27 IR 532
				*DG (27 IR 3346)	876 IAC 3-4-8	A	03-23	26 IR 3418	27 IR 533
									*ERR (27 IR 538)
TITLE 872 INDIANA BOARD OF ACCOUNTANCY					876 IAC 3-5-1	A	02-245	26 IR 3139	27 IR 184
872 IAC 1-1-2	A	03-126	27 IR 277	*ARR (27 IR 1185)	876 IAC 3-5-1.5	A	02-245	26 IR 3140	27 IR 185
				*CPH (27 IR 1196)	876 IAC 3-5-2.5	N	03-273	27 IR 1643	27 IR 2740
				27 IR 2733	876 IAC 3-5-6.1	N	03-23	26 IR 3418	27 IR 533
872 IAC 1-1-6.1	A	04-41	27 IR 2574		876 IAC 3-5-7	A	02-245	26 IR 3141	27 IR 185
872 IAC 1-1-6.2	A	03-126	27 IR 277	*ARR (27 IR 1185)	876 IAC 3-6-2	A	03-225	27 IR 1287	27 IR 2738
				*CPH (27 IR 1196)	876 IAC 3-6-3	A	03-225	27 IR 1287	27 IR 2739
				27 IR 2733	876 IAC 3-6-4	A	02-245	26 IR 3141	27 IR 186
872 IAC 1-1-6.4	A	03-126	27 IR 277	*ARR (27 IR 1185)	876 IAC 3-6-9	A	03-196	27 IR 282	27 IR 1182
				*CPH (27 IR 1196)					
				27 IR 2734	TITLE 880 SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD				
872 IAC 1-1-6.5	A	03-126	27 IR 278	*ARR (27 IR 1185)	880 IAC 1-2	R	03-53	26 IR 3422	27 IR 537
				*CPH (27 IR 1196)	880 IAC 1-2.1	N	03-53	26 IR 3419	27 IR 534
				27 IR 2734					
872 IAC 1-1-6.6	A	03-126	27 IR 278	*ARR (27 IR 1185)	TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS				
				*CPH (27 IR 1196)	888 IAC 1.1-6-1	A	04-74	27 IR 2875	
				27 IR 2734	888 IAC 1.1-10-1	RA	03-77	26 IR 3148	27 IR 946
872 IAC 1-1-8.3	A	03-126	27 IR 279	*ARR (27 IR 1185)	888 IAC 1.1-10-2	RA	03-77	26 IR 3148	27 IR 946
				*CPH (27 IR 1196)	888 IAC 1.1-10-3	RA	03-77	26 IR 3148	27 IR 946
				27 IR 2735	888 IAC 1.1-10-4	RA	03-77	26 IR 3148	27 IR 946
872 IAC 1-1-9	A	03-126	27 IR 279	*ARR (27 IR 1185)	TITLE 905 ALCOHOL AND TOBACCO COMMISSION				
				*CPH (27 IR 1196)	905 IAC 1-5.2-9	R	03-38	26 IR 2688	*ARR (27 IR 1185)
				27 IR 2735				27 IR 1289	27 IR 2282
872 IAC 1-1-9.5	A	03-126	27 IR 279	*ARR (27 IR 1185)	905 IAC 1-5.2-9.1	N	03-38	26 IR 2687	*ARR (27 IR 1185)
				*CPH (27 IR 1196)				27 IR 1288	27 IR 2281
				27 IR 2735	905 IAC 1-5.2-9.2	N	03-38	26 IR 2687	*ARR (27 IR 1185)
872 IAC 1-1-10	A	03-126	27 IR 279	*ARR (27 IR 1185)				27 IR 1289	27 IR 2281
				*CPH (27 IR 1196)		A	04-111	27 IR 3337	
				27 IR 2735	905 IAC 1-11.1-1	A	03-39	26 IR 2688	*ARR (27 IR 1185)
872 IAC 1-1-12	A	03-126	27 IR 280	*ARR (27 IR 1185)					*CPH (27 IR 1196)
				*CPH (27 IR 1196)					27 IR 2282
				27 IR 2736	905 IAC 1-11.1-2	A	03-39	26 IR 2688	*ARR (27 IR 1185)
872 IAC 1-1-14	A	03-126	27 IR 280	*ARR (27 IR 1185)					*CPH (27 IR 1196)
				*CPH (27 IR 1196)					27 IR 2282
				27 IR 2737	905 IAC 1-13-3	A	03-40	26 IR 2689	*ARR (27 IR 1185)
872 IAC 1-1-17	R	03-126	27 IR 282	*ARR (27 IR 1185)					*CPH (27 IR 1196)
				*CPH (27 IR 1196)					27 IR 2283
				27 IR 2738	905 IAC 1-13-6	N	03-40	26 IR 2689	*ARR (27 IR 1185)
872 IAC 1-1-19	A	03-126	27 IR 281	*ARR (27 IR 1185)					*CPH (27 IR 1196)
				*CPH (27 IR 1196)					27 IR 2283
				27 IR 2737	905 IAC 1-15.2-3	A	03-94	26 IR 3745	*ARR (27 IR 1185)
872 IAC 1-1-22	R	03-126	27 IR 282	*ARR (27 IR 1185)					*AWR (27 IR 2501)
				*CPH (27 IR 1196)		A	04-110	27 IR 3337	
				27 IR 2738	905 IAC 1-26-3	N	04-112	27 IR 3338	
872 IAC 1-1-23	R	03-126	27 IR 282	*ARR (27 IR 1185)	905 IAC 1-35.1	N	03-96	26 IR 3745	*ARR (27 IR 1185)
				*CPH (27 IR 1196)		N	03-96	27 IR 1290	*AROC (27 IR 1653)
				27 IR 2738					*AROC (27 IR 2580)
872 IAC 1-1-25	A	03-126	27 IR 282	*ARR (27 IR 1185)					27 IR 2497
				*CPH (27 IR 1196)	905 IAC 1-36-2	A	03-97	26 IR 3747	
				27 IR 2738	905 IAC 1-43	RA	04-14	27 IR 2579	*CPH (27 IR 3096)

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905 IAC 1-44	RA	04-109	27 IR 3343	
905 IAC 1-45	N	02-338	26 IR 2128	*ERR (26 IR 2375)
				27 IR 189
905 IAC 1-45-2	A	03-319	27 IR 2576	*CPH (27 IR 3096)
905 IAC 1-45-3	A	03-319	27 IR 2576	*CPH (27 IR 3096)
905 IAC 1-46	N	03-279	27 IR 1291	
905 IAC 1-47	N	03-280	27 IR 1292	
905 IAC 1-48	N	04-115	27 IR 3339	

TITLE 910 CIVIL RIGHTS COMMISSION

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*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
I:	Document Ineffective
N:	New Text
NRA:	Notice of Rule Adoption
OAC:	Objection to Errata
ON:	Other Notices of Administrative Action
R:	Repealed Text
RA:	Readopted Rule
SAC:	Solicitation of Advance Comment
SPE:	Statutory Period for Promulgation Expired
SPE-SE:	Statutory Period for Promulgation Expired; Signed After Expiration
††:	Renumbered or Added in Final Rule

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*The index is cumulative for all proposed and final rulemaking actions published after September 1, 2003. Final rules published before that date have been incorporated into the 2004 edition of the Indiana Administrative Code. Indiana Register citations in roman type are to the volume and page on which the proposed version of the rule appears. Entries in **bold** type indicate the page on which a final rule filed with the Secretary of State appears.

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MOTOR VEHICLE EMISSION AND FUEL STANDARDS		Transition procedures		326 IAC 2-7-3	26 IR 2006
Motor Vehicle Inspection and Maintenance Requirements		326 IAC 2-5.1-4	27 IR 2041	Permit by Rule	
Definitions		Emission Offset		LSA Document #04-9(E)	27 IR 1608
326 IAC 13-1.1-1	26 IR 2062	Applicable requirements		LSA Document #04-81(E)	27 IR 2516
Facility and testing requirements		326 IAC 2-3-3	27 IR 2025	LSA Document #04-154(E)	27 IR 3091
326 IAC 13-1.1-14	26 IR 2065	Applicability		Compliance with other provisions	
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326 IAC 13-1.1-16	26 IR 2066	Definitions		Conditions	
Testing procedures and standards		326 IAC 2-3-1	26 IR 2000	326 IAC 2-10-3.1	27 IR 2325
326 IAC 13-1.1-8	26 IR 2063	27 IR 2014		Definitions	
Test reports; repair forms		Emission Reporting		326 IAC 2-10-2.1	27 IR 2325
326 IAC 13-1.1-13	26 IR 2064	Applicability		Demonstration of compliance	
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326 IAC 13-1.1-10	26 IR 2063	27 IR 2210		Enforcement	
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326 IAC 10-1-5	26 IR 2059	326 IAC 2-6-2	24 IR 3700	Permit by Rule for Specific Source Categories	
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326 IAC 10-1-2	26 IR 2056	326 IAC 2-6-4	24 IR 3703	326 IAC 2-11-2	27 IR 2327
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326 IAC 10-1-4	26 IR 2057	326 IAC 2-6-5	24 IR 3705	326 IAC 2-11-1	27 IR 2326
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326 IAC 10-1-6	26 IR 2059	326 IAC 2-2.6	27 IR 2013	326 IAC 2-11-3	27 IR 2327
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326 IAC 5-1-4	26 IR 2026	General Provisions		326 IAC 2-2.3	27 IR 2004
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326 IAC 5-1-2	26 IR 2025	326 IAC 2-1.1-7	27 IR 1981	326 IAC 2-3.3	27 IR 2032
Violations		Minor Source Operating Permit Program		Prevention of Significant Deterioration (PSD) Requirements	
326 IAC 5-1-5	26 IR 2026	Applicability		Additional analysis; requirements	
PARTICULATE RULES		326 IAC 2-6.1-2	27 IR 3149	326 IAC 2-2-7	27 IR 1998
County Specific Particulate Matter Limitations		Application requirements		Air quality analysis; requirements	
Applicability		326 IAC 2-6.1-4	27 IR 3149	326 IAC 2-2-4	27 IR 1995
326 IAC 6-1-1	25 IR 710	Compliance schedule		Air quality impact; requirements	
Lake County PM ₁₀ coke battery emission requirements		326 IAC 2-6.1-3	27 IR 3149	326 IAC 2-2-5	27 IR 1996
326 IAC 6-1-10.2	26 IR 1994	Exemptions		Ambient air ceilings	
27 IR 85		326 IAC 2-6.1-1	27 IR 3149	326 IAC 2-2-16	26 IR 1999
Lake County PM ₁₀ emission requirements		Operating permit content		Applicability	
326 IAC 6-1-10.1	26 IR 1970	326 IAC 2-6.1-5	27 IR 3150	326 IAC 2-2-2	27 IR 1993
27 IR 61		Operating permit renewal		Area designation and redesignation	
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326 IAC 6-1-13	27 IR 2318	Permit revisions		Control technology review; requirements	
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326 IAC 2-2.4	27 IR 2005	Administrative permit amendments		326 IAC 2-2-1	27 IR 250
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326 IAC 2-3.4	27 IR 2033	Part 70 permits; source modifications		27 IR 1983	
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326 IAC 2-2.2	27 IR 2000			326 IAC 2-2-6	27 IR 256
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326 IAC 2-2-10	27 IR 1999	County	326 IAC 8-9-3	24 IR 2760
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326 IAC 2-2-8	27 IR 1998	limitations	Exemptions	
Registrations		326 IAC 7-4-13	326 IAC 8-9-2	24 IR 2760
Applicability		Vigo County sulfur dioxide emission limita-		26 IR 2036
326 IAC 2-5.5-1	27 IR 3146	tions	Record keeping and reporting requirements	
Application requirements		326 IAC 7-4-3	326 IAC 8-9-6	24 IR 2765
326 IAC 2-5.5-3	27 IR 3146	Warrick County sulfur dioxide emission		26 IR 2042
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326 IAC 2-5.5-2	27 IR 3146	326 IAC 7-4-10	326 IAC 8-9-4	24 IR 2761
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326 IAC 2-5.5-5	27 IR 3147	VOLATILE ORGANIC COMPOUND RULES	Testing and procedures	
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326 IAC 2-5.5-4	27 IR 3147	Test procedures		26 IR 2040
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326 IAC 2-5.5-6	27 IR 3147	General Provisions	Applicability	
Source Specific Operating Agreement Program		Testing procedures	326 IAC 8-11-1	24 IR 2767
Abrasive cleaning operations		326 IAC 8-1-4	Compliance procedures and monitoring re-	
326 IAC 2-9-5	27 IR 3158	Petroleum Sources	quirements	
Automobile refinishing operations		Gasoline dispensing facilities	326 IAC 8-11-6	24 IR 2771
326 IAC 2-9-11	27 IR 3164	326 IAC 8-4-6		26 IR 2046
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326 IAC 2-9-10	26 IR 2013	systems; records	326 IAC 8-11-5	24 IR 2771
	27 IR 3163	326 IAC 8-4-9	Definitions	
Crushed stone processing plants		Shipbuilding or Ship Repair Operations in	326 IAC 8-11-2	24 IR 2767
326 IAC 2-9-8	26 IR 2010	Clark, Floyd, Lake, and Porter Counties		26 IR 2044
	27 IR 3160	Compliance requirements	Emission limits	
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326 IAC 2-9-12	27 IR 3165	Definitions	Provisions for sources electing to use emis-	
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326 IAC 2-9-13	26 IR 2014	Record keeping, notification, and reporting	326 IAC 8-11-10	24 IR 2777
	27 IR 3165	requirements	Record keeping requirements	
General provisions		326 IAC 8-12-7	326 IAC 8-11-8	24 IR 2775
326 IAC 2-9-1	27 IR 3155	Test methods and procedures	Reporting requirements	
Grain elevators		326 IAC 8-12-6	326 IAC 8-11-9	24 IR 2776
326 IAC 2-9-6	27 IR 3159	Sinter Plants	Test procedures	
Industrial or commercial surface coating		Test procedures	326 IAC 8-11-7	24 IR 2775
operations not subject to 326 IAC 8-2;		326 IAC 8-13-5		26 IR 2050
graphic arts operation not subject to 326		Specific VOC Reduction Requirements for	Work practice standards	
IAC 8-5-5		Lake, Porter, Clark, and Floyd Counties	326 IAC 8-11-4	24 IR 2770
326 IAC 2-9-2.5	27 IR 3156	Applicability		
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326 IAC 2-9-14	27 IR 3167	Certification, record keeping, and reporting	GENERAL PROVISIONS	
Ready-mix concrete batch plants		requirements for coating facilities	Auto Race Tracks	
326 IAC 2-9-9	26 IR 2011	326 IAC 8-7-6	905 IAC 1-35.1	26 IR 3745
	27 IR 3162	Compliance methods		27 IR 1290
Sand and gravel plants		326 IAC 8-7-4		27 IR 2497
326 IAC 2-9-7	26 IR 2009	Compliance plan	Clubs	
	27 IR 3159	326 IAC 8-7-5	Requirement to publicly post operating dates	
Surface coating or graphic arts operations		Control system monitoring, record keeping,	905 IAC 1-13-6	26 IR 2689
326 IAC 2-9-3	27 IR 3156	and reporting		27 IR 2283
Woodworking operations		326 IAC 8-7-10	Service to nonmembers	
326 IAC 2-9-4	27 IR 3157	Control system operation, maintenance, and	905 IAC 1-13-3	26 IR 2689
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Applicability; incorporation by reference of		Definitions	Loitering	
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326 IAC 16-3-1	26 IR 2084	Emission limits		27 IR 3337
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General Provisions		General record keeping and reports	905 IAC 1-47	27 IR 1292
Incorporation of federal regulations		326 IAC 8-7-8	Permit Renewal; Letter of Extension	
326 IAC 22-1-1	26 IR 2098	Test methods and procedures	Revocation of letter of extension	
SULFUR DIOXIDE RULES		326 IAC 8-7-7	905 IAC 1-26-3	27 IR 3338
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mine compliance		Applicability		
326 IAC 7-2-1	26 IR 2028	326 IAC 8-9-1		

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Review of local alcoholic beverage board's approval or denial of an application for an alcoholic beverage permit		345 IAC 1-3-22	26 IR 3108	GENERAL PROVISIONS	
905 IAC 1-36-2	26 IR 3747		27 IR 490	Adoption by Reference; Title; Scope; Applicability; Classification; Availability of Rule; Violations; Penalties; Appeals	
Temporary Beer/Wine Permit Fees		Rabies Immunization		Adoption by reference; approval of revisions	
Qualification requirements		Rabies vaccination	26 IR 3108	LSA Document #04-37(E)	27 IR 2296
905 IAC 1-11.1-2	26 IR 2688		27 IR 491		
27 IR 2282		Reportable Diseases		BOXING COMMISSION, STATE	
Temporary beer and wine permits		Individual and veterinarian responsibility	26 IR 3105	BOXING AND OTHER RING EXHIBITIONS	
905 IAC 1-11.1-1	26 IR 2688	345 IAC 1-6-2	27 IR 90	Contestants	
27 IR 2282				Athletic costumes and protective equipment	
Tobacco Retail Sales Certificates		Laboratory responsibility	26 IR 3105	808 IAC 2-1-5	27 IR 2564
905 IAC 1-46	27 IR 1291	345 IAC 1-6-3	27 IR 90	Female boxers	
Tracking Beer Kegs				808 IAC 2-1-12	27 IR 2564
905 IAC 1-45	26 IR 2128	LIVESTOCK DEALERS, MARKETING, EXHIBITIONS, AND SLAUGHTER LIVESTOCK		Gloves	
27 IR 189		Exhibition of Domestic Animals and Poultry		Gloves; mouthpiece; inspection; specifications	
Identification numbers		Pseudorabies tests for swine	27 IR 2797	808 IAC 2-22-1	27 IR 2565
905 IAC 1-45-2	27 IR 2576	345 IAC 7-5-15.1		Physician; Testing for the Use of Prohibited Drugs	
Receipt for the keg		Vaccinations and tests required for dogs and cats	27 IR 2798	Confidentiality	
905 IAC 1-45-3	27 IR 2576	345 IAC 7-5-22		808 IAC 2-12-8	27 IR 2568
Trade practices; permissible activity between primary sources of supply, wholesalers, and retailers		Licensing and Bonding of Livestock Dealers and Markets		Costs	
Samples; consumer product sampling		Care and handling; nonambulatory livestock	27 IR 2328	808 IAC 2-12-7	27 IR 2568
905 IAC 1-5.2-9.2	26 IR 2687	345 IAC 7-3.5-16		Definitions	
	27 IR 1289	MEAT AND MEAT PRODUCTS INSPECTION		808 IAC 2-12-0.5	27 IR 2566
27 IR 2281		Incorporation by Reference		Disciplinary actions	
	27 IR 3337	Incorporation by reference		808 IAC 2-12-6	27 IR 2567
Samples; wholesale to retail		LSA Document #04-29(E)	27 IR 1930	Refusal to submit to drug test	
905 IAC 1-5.2-9.1	26 IR 2687	LSA Document #04-119(E)	27 IR 2758	808 IAC 2-12-5	27 IR 2567
	27 IR 1288	345 IAC 9-2.1-1	27 IR 2329	Test for prohibited drugs	
27 IR 2281		Postmortem Inspection		808 IAC 2-12-3	27 IR 2567
Withdrawal of Consent to Transfer Permit		Animals tested for bovine spongiform encephalopathy		Testing procedures	
905 IAC 1-48	27 IR 3339	345 IAC 9-10.5-2	27 IR 2329	808 IAC 2-12-4	27 IR 2567
				Use of prohibited drugs	
				808 IAC 2-12-2	27 IR 2567
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Chronic Wasting Disease		Definitions and abbreviations	26 IR 3136	808 IAC 2-7-14	27 IR 2564
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345 IAC 2-7-3	25 IR 1999			Exhibitions	
	25 IR 2776	ATTORNEY GENERAL FOR THE STATE, OFFICE OF TORT CLAIMS		808 IAC 2-9-5	27 IR 2564
26 IR 347		Tort Claims		Weighing Time	
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27 IR 92		10 IAC 3-1-2	26 IR 3911	808 IAC 2-18-1	27 IR 2565
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345 IAC 2-7-2.4	26 IR 3106	Tort claims against the state; form		Licenses and Permits	
27 IR 92		10 IAC 3-1-1	26 IR 3909	Security for the purse; forms	
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345 IAC 2-7-2.5	26 IR 3107	UNCLAIMED PROPERTY		Seats for Commission and Officials	
27 IR 92		Filing dates for reports required to be filed		Bond of promoter license applicant	
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345 IAC 1-3-30	26 IR 3102	(See Cumulative Table of Executive Orders and Attorney General's Opinions at 27 IR 3430)			
27 IR 87				CHILDREN'S HEALTH INSURANCE PROGRAM, OFFICE OF THE BENEFITS AND MEDICAL POLICY	
Chronic wasting disease; carcasses				Mental Health and Substance Abuse Services	
345 IAC 1-3-31	26 IR 3104			Reimbursement limitations	
27 IR 89				LSA Document #04-104(E)	27 IR 2519
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345 IAC 1-3-32	26 IR 3104				
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LSA Document #04-104(E)	27 IR 2519				
407 IAC 3-13-1	27 IR 2535				
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910 IAC 2-4-7	27 IR 1644				
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910 IAC 2-4-10	27 IR 1646				
	27 IR 3077				
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910 IAC 2-4-6	27 IR 1644				
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910 IAC 2-4-8	27 IR 1645				
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910 IAC 2-4-9	27 IR 1645				
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11 IAC 2-5-5	26 IR 1598				
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858 IAC 2-1-2	27 IR 1286				
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828 IAC 1-2-7	26 IR 3410				
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828 IAC 1-2-3	26 IR 3409				
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828 IAC 1-2-12	26 IR 3410				
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828 IAC 1-2-6	26 IR 3410				
	27 IR 2280				
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828 IAC 1-1-7	26 IR 3409				
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828 IAC 1-1-3	26 IR 3408				
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828 IAC 1-1-12	26 IR 3409				
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828 IAC 1-1-6	26 IR 3409				
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460 IAC 3.5-2-1	27 IR 269				
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LABOR, DEPARTMENT OF

SAFETY EDUCATION AND TRAINING—OCCUPATIONAL SAFETY

Recording and Reporting Occupational Injuries and Illnesses

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