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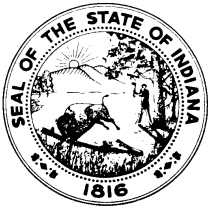
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RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

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) 2005 Indiana Administrative Code (CD-ROM version).
- (2) Volume 28 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 2004 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:
December 10, 2004	January 1, 2005	July 11, 2005	August 1, 2005
January 10, 2005	February 1, 2005	August 10, 2005	September 1, 2005
February 10, 2005	March 1, 2005	September 9, 2005	October 1, 2005
March 10, 2005	April 1, 2005	October 10, 2005	November 1, 2005
April 11, 2005	May 1, 2005	November 10, 2005	December 1, 2005
May 10, 2005	June 1, 2005	December 9, 2005	January 1, 2006
June 10, 2005	July 1, 2005	January 10, 2006	February 1, 2006

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	Manufactured Home Installer Licensing Board	879
†Air Pollution Control Board	325.1	Medical and Nursing Distribution Loan Fund Board of Trustees, Indiana	580
Air Pollution Control Board	326	Medical Licensing Board of Indiana	844
†Air Pollution Control Board of the State of Indiana	325	Mental Health and Addiction, Division of	440
Alcohol and Tobacco Commission	905	Meridian Street Preservation Commission	925
Amusement Device Safety Board, Regulated	685	Motor Vehicles, Bureau of	140
Animal Health, Indiana State Board of	345	†Natural Resources, Department of	310
Architects and Landscape Architects, Board of Registration for	804	Natural Resources Commission	312
Athletic Trainers Board, Indiana	898	Nursing, Indiana State Board of	848
Attorney General for the State, Office of	10	Occupational Safety Standards Commission	620
Auctioneer Commission, Indiana	812	Optometric Legend Drug Prescription Advisory Committee, Indiana	857
Barber Examiners, Board of	816	Optometry Board, Indiana	852
Boiler and Pressure Vessel Rules Board	680	Parole Board	220
Boxing Commission, State	808	†Personnel Board, State	30
Budget Agency	85	Personnel Department, State	31
Chemist of the State of Indiana, State	355	Pesticide Review Board, Indiana	357
Children's Health Insurance Program, Office of the	407	Pharmacy, Indiana Board of	856
Chiropractic Examiners, Board of	846	Plumbing Commission, Indiana	860
Civil Rights Commission	910	Podiatric Medicine, Board of	845
†Clemency Commission, Indiana	230	Police Department, State	240
Commerce, Department of	55	Political Subdivision Risk Management Commission, Indiana	762
Community Residential Facilities Council	431	Port Commission, Indiana	130
Consumer Protection Division of the Office of the Attorney General	11	Private Detectives Licensing Board	862
Controlled Substances Advisory Committee	858	Professional Standards Board	515
Coroners Training Board	207	Proprietary Education, Indiana Commission on	570
Correction, Department of	210	Psychology Board, State	868
Cosmetology Examiners, State Board of	820	Public Access Counselor, Office of the	62
Creamery Examining Board	365	Public Employees' Retirement Fund, Board of Trustees of the	35
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Deaf Board, Indiana School for the	514	Public Safety Training Institute	280
Dentistry, State Board of	828	Real Estate Commission, Indiana	876
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Dietitians Certification Board, Indiana	830	Revenue, Department of State	45
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†Education, Commission on General	510	School Bus Committee, State	575
Education, Indiana State Board of	511	Secretary of State	75
Education Employment Relations Board, Indiana	560	Securities Division	710
Education Savings Authority, Indiana	540	Seed Commissioner, State	360
Egg Board, State	370	Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board	839
†Election Board, State	15	†Soil and Water Conservation Committee, State	311
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†Elevator Safety Board	670	†Solid Waste Management Board	320.1
Emergency Management Agency, State	290	Solid Waste Management Board	329
Emergency Medical Services Commission, Indiana	836	Speech-Language Pathology and Audiology Board	880
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†Employment and Training Services, Department of	645	†Stream Pollution Control Board of the State of Indiana	330
Engineers, State Board of Registration for Professional	864	Student Assistance Commission, State	585
Enterprise Zone Board	58	Tax Review, Indiana Board of	52
Environmental Adjudication, Office of	315	†Teacher Training and Licensing, Commission on	530
Environmental Health Specialists, Board of	896	Teachers' Retirement Fund, Board of Trustees of the Indiana State	550
†Environmental Management Board, Indiana	320	Television and Radio Service Examiners, Board of	884
Ethics Commission, State	40	†Textbook Adoptions, Commission on	520
Fair Commission, State	80	Toxicology, State Department of	260
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Family and Social Services, Office of the Secretary of	405	†Transportation, Department of	100
Financial Institutions, Department of	750	Transportation, Indiana Department of	105
Fire Marshal, State	650	Transportation Finance Authority, Indiana	135
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Firefighting Personnel Standards and Education, Board of	655	†Unemployment Insurance Board, Indiana	640
Forensic Sciences, Commission on	415	Utility Regulatory Commission, Indiana	170
Funeral and Cemetery Service, State Board of	832	†Vehicle Inspection, Department of	160
Gaming Commission, Indiana	68	Veterans' Affairs Commission	915
Geologists, Indiana Board of Licensure for Professional	305	Veterinary Medical Examiners, Indiana Board of	888
Grain Buyers and Warehouse Licensing Agency, Indiana	824	Victim Services Division	203
Grain Indemnity Corporation, Indiana	825	Violent Crime Compensation Division	480
Hazardous Waste Facility Site Approval Authority, Indiana	323	†Vocational and Technical Education, Indiana Commission on	572
Health, Indiana State Department of	410	†Wage Adjustment Board	635
Health Facilities Council, Indiana	412	War Memorials Commission, Indiana	920
Health Facility Administrators, Indiana State Board of	840	†Watch Repairing, Indiana State Board of Examiners in	892
†Highways, Department of	120	Water Pollution Control Board	327
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†Horse Racing Commission, Indiana	70	Worker's Compensation Board of Indiana	631
Horse Racing Commission, Indiana	71	Workforce Development, Department of	646
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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

NATURAL RESOURCES, ENVIRONMENT, AND AGRICULTURE

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

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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
878	Home Inspectors Licensing Board
879	Manufactured Home Installer Licensing Board
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 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-148(F)

DIGEST

Amends 326 IAC 1-4-1 concerning attainment status designations for the 8-hour ozone national ambient air quality standard. Effective 30 days after filing with the secretary of state.

HISTORY

IC 13-14-9-8 Notice and Notice of First Hearing: June 1, 2004, Indiana Register (27 IR 2883).

Date of First Hearing: July 7, 2004.

Proposed Rule and Notice of Second Hearing: August 1, 2004, Indiana Register (27 IR 3605).

Date of Second Hearing: September 1, 2004.

326 IAC 1-4-1

SECTION 1. 326 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-1 Designations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. **(a)** The air pollution control board incorporates by reference **the following documents concerning attainment status designations:**

(1) 40 CFR 81.315*.

(2) 66 FR 53665 (October 23, 2001)*. ~~and~~

(3) 68 FR 1370 (January 10, 2003)*.

(4) 69 FR 23858 (April 30, 2004)*.

concerning attainment status designations:

(b) For purposes of permits that are subject to 326 IAC 2-3 due to the designations in subsection (a)(4), notwithstanding 326 IAC 2-3-2(a) and 326 IAC 2-3-2(e), the requirements of 326 IAC 2-3 apply to any permit that:

(1) would otherwise be subject to 326 IAC 2-3; and

(2) is issued on or after the effective date of the incorporation of 69 FR 23858.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056; filed Nov 15, 2002, 11:17 a.m.: 26 IR 1077; filed Dec 1, 2003, 10:00 a.m.: 27 IR 1167;*

filed Nov 12, 2004, 12:15 p.m.: 28 IR 1182)

LSA Document #04-148(F)

Proposed Rule Published: August 1, 2004; 27 IR 3605

Hearing Held: September 1, 2004

Approved by Attorney General: October 25, 2004

Approved by Governor: November 9, 2004

Filed with Secretary of State: November 12, 2004, 12:15 p.m. IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: 8-Hour Ozone National Ambient Air Quality Standards, Federal Register, April 30, 2004 (69 FR 23858).

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #04-171(F)

DIGEST

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. Effective 30 days after filing with the secretary of state.

872 IAC 1-1-6.1

SECTION 1. 872 IAC 1-1-6.1, AS AMENDED AT 28 IR 212, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-6.1 Educational requirements

Authority: IC 25-2.1-2-15

Affected: IC 25-2.1-3-2; IC 25-2.1-6

Sec. 6.1. (a) Compliance with IC 25-2.1-3-2 regarding educational requirements for first time **CPA** examination ~~applicants~~, **candidates** will be met by obtaining at least one hundred fifty (150) semester hours of college education, including a baccalaureate or higher degree from an accredited college or university. As part of the one hundred fifty (150) semester hours, ~~an applicant~~ **a candidate** must meet any one (1) of the following conditions:

(1) Earned a graduate degree from a college or university that is accredited by an accrediting organization as included in section 6.3 of this rule and completed:

(A) at least twenty-four (24) semester hours in accounting at the undergraduate level or fifteen (15) semester hours in accounting at the graduate level **or an equivalent combination thereof**; and

(B) at least twenty-four (24) semester hours in business administration and economics courses, other than accounting courses, at the undergraduate or graduate level.

The business administration courses may include up to six (6) hours of business and tax law courses and up to six (6) hours of computer science courses. The accounting hours must

include courses covering the subjects of financial accounting, auditing, taxation, and managerial accounting. If the accounting hours are a mixture of graduate and undergraduate hours, the higher number of required hours applies. **An equivalent combination of undergraduate and graduate semester hours under clause (A) would be a total of twenty-four (24) semester hours calculated at the rate of one and six-tenths (1.6) semester hours for each actual one (1) semester hour in accounting at the graduate level and one (1) semester hour for each actual one (1) semester hour in accounting at the undergraduate level.**

(2) Earned a baccalaureate degree from a college or university that is accredited by an accrediting organization as included in section 6.3 of this rule and completed:

(A) at least twenty-four (24) semester hours in accounting at the undergraduate or graduate level, including courses covering the subjects of financial accounting, auditing, taxation, and managerial accounting; and

(B) at least twenty-four (24) semester hours in business administration and economics courses other than accounting courses.

The business administration courses may include up to six (6) hours of business and tax law courses and up to six (6) hours of computer science courses.

(b) College courses with substantial duplication of content may be counted only one (1) time toward the requirements in IC 25-2.1-3-2 and this section. This subsection shall not apply to internships. (*Indiana Board of Accountancy; 872 IAC 1-1-6.1; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3933; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Aug 3, 2001, 4:34 p.m.: 24 IR 3989; filed Jul 30, 2003, 5:15 p.m.: 26 IR 3881; filed Sep 8, 2004, 2:45 p.m.: 28 IR 212; filed Nov 29, 2004, 11:45 a.m.: 28 IR 1182*)

LSA Document #04-171(F)

Notice of Intent Published: July 1, 2004; 27 IR 3100

Proposed Rule Published: September 1, 2004; 27 IR 4138

Hearing Held: October 15, 2004

Approved by Attorney General: November 9, 2004

Approved by Governor: November 24, 2004

Filed with Secretary of State: November 29, 2004, 11:45 a.m.

IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

**TITLE 329 SOLID WASTE MANAGEMENT
BOARD**

LSA Document #01-161(AC)

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling error in LSA Document #01-161(F), printed at 28 IR 144:

In 329 IAC 9-6-4, on page 30 of the original document (28 IR 173), delete “section 2” and insert “section 2.5”.

Filed with Secretary of State: December 2, 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 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #04-298

Under IC 4-22-2-41, LSA Document #04-298, printed at 28 IR 984, is withdrawn.

**TITLE 836 INDIANA EMERGENCY MEDICAL
SERVICES COMMISSION**

LSA Document #04-288

Under IC 4-22-2-41, LSA Document #04-288, printed at 28 IR 984, is withdrawn.

Emergency Rules

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-301(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 736. Effective November 19, 2004.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 736, Holiday Dough".

SECTION 2. Scratch-off tickets in scratch-off game number 736 shall sell for one dollar (\$1) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 736 shall contain ten (10) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. The play symbols and play symbol captions in scratch-off game number 736 shall consist of the following possible play symbols and play symbol captions:

- (1) A picture of a santa
SANTA
- (2) A picture of bells
BELLS
- (3) A picture of a snowflake
SNFLAKE
- (4) A picture of a candy cane
CANDY
- (5) A picture of a reindeer
RNDEER
- (6) A picture of a horn
HORN
- (7) A picture of a christmas tree
TREE
- (8) A picture of a snowman
SNOMAN
- (9) A picture of a present
PRESNT
- (10) A picture of a ginger bread man
WIN

(b) The play symbols representing prize amounts shall consist of the following possible play symbols:

- (1) \$1.00
ONE
- (2) \$2.00
TWO
- (3) \$4.00
FOUR
- (4) \$5.00
FIVE
- (5) \$10.00
TEN
- (6) \$20.00
TWENTY

- (7) \$40.00
FORTY
- (8) \$100
ONE HUN
- (9) \$2,000
TWO THOU

SECTION 4. The holder of a ticket in scratch-off game number 736 shall remove the latex material covering the six (6) play symbols and play symbol captions. If the play symbol and play symbol caption of a ginger bread man with the play symbol "WIN" is exposed, the holder is entitled to the corresponding prize amount. The prize amounts and number of winners in scratch-off game number 736 are as follows:

Matched Play Symbols	Prize Amount	Approximate Number of Winners
1 – \$1.00	\$1	408,000
1 – \$2.00	\$2	136,000
2 – \$1.00	\$2	136,000
1 – \$4.00	\$4	27,200
4 – \$1.00	\$4	27,200
2 – \$2.00	\$4	27,200
1 – \$5.00	\$5	13,600
5 – \$1.00	\$5	13,600
1 – \$10.00	\$10	13,600
5 – \$2.00	\$10	13,600
3 – \$2.00 + 1 – \$4.00	\$10	13,600
1 – \$20.00	\$20	6,800
5 – \$4.00	\$20	6,800
1 – \$40.00	\$40	3,400
4 – \$10.00	\$40	1,700
1 – \$100	\$100	680
5 – \$20.00	\$100	680
1 – \$2,000	\$2,000	17

SECTION 5. (a) There shall be approximately four million (4,000,000) scratch-off tickets initially available in scratch-off game number 736.

(b) The odds of winning a prize in scratch-off game number 736 are approximately 1 in 4.80.

(c) All reorders of tickets for scratch-off game number 736 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 736 is November 30, 2005.

SECTION 7. This document expires December 31, 2005.

LSA Document #04-301(E)
Filed with Secretary of State: November 18, 2004, 12:35 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-302(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 737. Effective November 19, 2004.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 737, Ring in the Holidays!".

SECTION 2. Scratch-off tickets in scratch-off game number 737 shall sell for one dollar (\$1) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 737 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. Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Ten (10) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" and be arranged in pairs representing numbers or a picture of a bell and prize amounts.

(b) The play symbols and play symbol captions in scratch-off game number 737, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

- (1) 1
ONE
- (2) 2
TWO
- (3) 3
THR
- (4) 4
FOR
- (5) 5
FIV
- (6) 6
SIX
- (7) 7
SVN
- (8) 8
EGT
- (9) 9
NIN
- (10) 10
TEN
- (11) 11
ELV
- (12) 12
TLV

- (13) 13
TRN
- (14) 14
FRN
- (15) 15
FTN
- (16) A picture of a bell
WIN

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 737 shall consist of the following possible play symbols and play symbol captions:

- (1) \$1.00
ONE
- (2) \$2.00
TWO
- (3) \$3.00
THREE
- (4) \$5.00
FIVE
- (5) \$6.00
SIX
- (6) \$10.00
TEN
- (7) \$20.00
TWENTY
- (8) \$40.00
FORTY
- (9) \$100
ONE HUN
- (10) \$4,000
FORTHOU

SECTION 4. The holder of a ticket in scratch-off game number 737 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If one (1) or more of "YOUR NUMBERS" match either of the "WINNING NUMBERS", the holder is entitled to the prize amount paired with the matched number. If the play symbol of a bell with the play symbol caption "WIN" is exposed, the holder is automatically entitled to the paired prize amount. The matched prize play symbols, prize amounts, and number of winners in scratch-off game number 737 are as follows:

Number of Matches Total and Bonus Play Symbols	Prize Amount	Approximate Number of Winners
1 – \$1.00	\$1	408,000
1 – \$1.00 + 1 – \$1.00 with bell	\$2	136,000
1 – \$2.00	\$2	136,000
4 – \$1.00	\$4	40,800
2 – \$1.00 + 1 – \$2.00 with bell	\$4	40,800
1 – \$2.00 + 1 – \$3.00 with bell	\$5	13,600
5 – \$1.00	\$5	13,600
5 – \$2.00	\$10	13,600

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2 – \$2.00 + 1 – \$6.00 with bell	\$10	13,600
1 – \$10.00	\$10	13,600
2 – \$5.00 + 1 – \$10.00 with bell	\$20	6,800
1 – \$20.00	\$20	6,800
2 – \$10.00 + 1 – \$20.00 with bell	\$40	1,360
4 – \$10.00	\$40	1,360
1 – \$40.00	\$40	1,360
5 – \$20.00	\$100	680
1 – \$100	\$100	680
1 – \$4,000	\$4,000	17

SECTION 5. (a) There shall be approximately four million (4,000,000) scratch-off tickets initially available in scratch-off game number 737.

(b) The odds of winning a prize in scratch-off game number 737 are approximately 1 in 4.81.

(c) All reorders of tickets for scratch-off game number 737 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 737 is November 30, 2005.

SECTION 7. This document expires December 31, 2005.

LSA Document #04-302(E)

Filed with Secretary of State: November 18, 2004, 12:35 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-303(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 738. Effective November 19, 2004.

SECTION 1. The name of this scratch-off game is “Scratch-Off Game Number 738, Holiday Package”.

SECTION 2. Scratch-off tickets in scratch-off game number 738 shall sell for two dollars (\$2) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 738 shall contain twenty-two (22) play symbols and play symbol captions all concealed under a large spot of latex material. Two (2) play symbols and play symbol captions shall appear in the game play data 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, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

- (1) 1
ONE
- (2) 2
TWO
- (3) 3
THR
- (4) 4
FOR
- (5) 5
FIV
- (6) 6
SIX
- (7) 7
SVN
- (8) 8
EGT
- (9) 9
NIN
- (10) 10
TEN
- (11) 11
ELV
- (12) 12
TLV
- (13) 13
TRN
- (14) 14
FRN
- (15) 15
FTN
- (16) 16
SXT
- (17) 17
SVT
- (18) 18
ETN
- (19) 19
NTN
- (20) 20
TWY
- (21) A picture of a bill
WIN
- (22) A picture of a snowflake
DOUBLE

(c) The play symbols representing prize amounts shall consist of the following possible play symbols:

- (1) \$1.00
ONE

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- (2) \$2.00
TWO
- (3) \$4.00
FOUR
- (4) \$5.00
FIVE
- (5) \$10.00
TEN
- (6) \$20.00
TWENTY
- (7) \$25.00
TWY FIVE
- (8) \$30.00
THIRTY
- (9) \$50.00
FIFTY
- (10) \$100
ONE HUN
- (11) \$400
FOR HUN
- (12) \$500
FIV HUN
- (13) \$10,000
TEN THOU
- (14) \$20,000
TWY THOU

SECTION 4. The holder of a ticket in scratch-off game number 738 shall remove the latex material covering the twenty-two (22) play symbols and play symbol captions. If one (1) or more of the play symbols and play symbol captions exposed in the "YOUR NUMBERS" area match either of the play symbols and play symbol captions exposed in the "WINNING NUMBERS" area, the holder is entitled to the matched prize amounts. If the play symbol of a bill with the play symbol caption "WIN" is exposed, the holder is automatically entitled to fifty dollars (\$50). If the play symbol of a snowflake with the play symbol caption "DOUBLE" is exposed, the holder is entitled to double the matched prize amount. The matched prize amounts and number of winners in scratch-off game number 738 are as follows:

Number of Matches and Matched Prize Amounts	Total Prize Amount	Approximate Number of Winners
1 – \$2.00	\$2	252,000
1 – \$4.00	\$4	201,600
1 – \$1.00 + 1 – \$2.00 with snowflake	\$5	25,200
1 – \$5.00	\$5	25,200
1 – \$5.00 with snowflake	\$10	12,600
5 – \$2.00	\$10	12,600
10 – \$1.00	\$10	6,300
1 – \$10.00	\$10	6,300
1 – \$10.00 with snowflake	\$20	6,300
10 – \$2.00	\$20	3,150
1 – \$20.00	\$20	3,150

1 – \$50 with bill	\$50	2,100
1 – \$25.00 with snowflake	\$50	2,100
1 – \$50.00	\$50	2,100
10 – \$10.00	\$50	1,050
5 – \$10.00 + 1 – \$50 with bill	\$100	1,050
1 – \$10.00 + 1 – \$30.00 + 3 – \$20.00	\$100	1,050
7 – \$50.00 + 1 – \$50 with bill	\$400	315
1 – \$400	\$400	315
1 – \$500 with snowflake	\$1,000	63
10 – \$100	\$1,000	42
1 – \$10,000	\$10,000	4
1 – \$20,000	\$20,000	4

SECTION 5. (a) There shall be approximately two million five hundred (2,500,000) *[sic.]* scratch-off tickets initially available in scratch-off game number 738.

(b) The odds of winning a prize in scratch-off game number 738 are approximately 1 in 4.46.

(c) All reorders of tickets for scratch-off game number 738 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 738 is November 30, 2005.

SECTION 7. This document expires December 31, 2005.

LSA Document #04-303(E)

Filed with Secretary of State: November 18, 2004, 12:35 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-304(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 739. Effective November 19, 2004.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 739, Diamond Dollars".

SECTION 2. Scratch-off tickets in scratch-off game number 739 shall sell for two dollars (\$2) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 739 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

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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 739, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

- (1) 1
ONE
- (2) 2
TWO
- (3) 3
THR
- (4) 4
FOR
- (5) 5
FIV
- (6) 6
SIX
- (7) 7
SVN
- (8) 8
EGT
- (9) 9
NIN
- (10) 10
TEN
- (11) 11
ELVN
- (12) 12
TWLV
- (13) 13
THRTN
- (14) 14
FORTN
- (15) 15
FIFTN
- (16) 16
SIXTN
- (17) 17
SVNTN
- (18) 18
EGHTN
- (19) 19
NINTN
- (20) 20
TWTY
- (21) A picture of a diamond shape
WIN
- (22) A picture of a diamond gemstone
WIN ALL

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 739 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
FIV HUN
- (14) \$10,000
TEN THOU
- (15) \$25,000
TWY FIV THOU

SECTION 4. The holder of a ticket in scratch-off game number 739 shall remove the latex material covering the twenty-two (22) play symbols and play symbol captions. If one (1) or more of “YOUR NUMBERS” match either of the “WINNING NUMBERS”, the holder is entitled to the prize amount paired with the matched number. If the play symbol of a picture of a diamond shape with the play symbol caption “WIN” is exposed, the player is automatically entitled to the paired prize amount. If the play symbol of a picture of a diamond gemstone with the play symbol caption “WIN ALL” is exposed, the player is automatically entitled to all ten (10) prize amounts. The number of matches, total prize amounts, and number of winners in scratch-off game number 739 are as follows:

Number of Matches Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – \$2.00	\$2	270,000
1 – \$4.00	\$4	225,000
1 – \$2.00 + 1 – \$3.00 with diamond shape	\$5	60,000
1 – \$5.00	\$5	30,000
10 – \$1.00 with diamond gemstone	\$10	15,000
5 – \$2.00	\$10	15,000
1 – \$3.00 + 1 – \$7.00 with diamond shape	\$10	15,000

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1 – \$10.00	\$10	15,000
10 – \$2.00 with diamond gemstone	\$20	7,500
10 – \$2.00	\$20	3,750
1 – \$5.00 + 1 – \$15.00	\$20	3,750
1 – \$20.00	\$20	3,750
10 – \$5.00 with diamond gemstone	\$50	2,500
5 – \$10.00	\$50	2,500
1 – \$50.00	\$50	1,050
10 – \$10.00 with diamond gemstone	\$100	1,000
1 – \$50.00 + 1 – \$50.00 with diamond shape	\$100	1,000
1 – \$10.00 + 1 – \$30.00 + 3 – \$20.00	\$100	1,000
1 – \$100	\$100	1,000
4 – \$100	\$400	375
10 – \$100 with diamond gemstone	\$1,000	16
5 – \$100 + 1 – \$500 with diamond shape	\$1,000	16
1 – \$10,000	\$10,000	8
1 – \$25,000	\$25,000	4

SECTION 5. (a) There shall be approximately three million (3,000,000) scratch-off tickets initially available in scratch-off game number 739.

(b) The odds of winning a prize in scratch-off game number 739 are approximately 1 in 4.45.

(c) All reorders of tickets for scratch-off game number 739 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 739 is November 30, 2005.

SECTION 7. This document expires December 31, 2005.

LSA Document #04-304(E)

Filed with Secretary of State: November 18, 2004, 12:35 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-305(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 025. Effective December 1, 2004.

SECTION 1. The name of this pull-tab game is "Pull-Tab Game Number 025, Snake Eyes".

SECTION 2. Pull-tab tickets for pull-tab game number 025 shall sell for twenty-five cents (\$0.25) per ticket.

SECTION 3. Pull-tab game number 025 is a match 3 game.

SECTION 4. A pull-tab ticket in pull-tab game number 025 shall contain twelve play symbols and play symbol captions arranged in a matrix of four (4) 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 025 shall consist of the following possible play symbols:

- (1) A picture of a dice
DICE
- (2) A picture of a snake
SNAKE
- (3) A picture of a dice cup
CUP
- (4) A picture of dice rake
RAKE
- (5) A picture of a dealer
DEALER
- (6) A picture of poker chips
CHIPS
- (7) A picture of a slot machine
SLOTS
- (8) A picture of a box of money
MONEY

SECTION 5. A row on a pull-tab ticket in pull-tab game number 025 which contains three (3) play symbols and play symbol captions is not a match 3 winning row unless all of the following are true:

- (1) The play symbols and play symbol captions appear in one (1) of the following combinations:
 - (A) Dice – Dealer – Dice
 - (B) Dice – Rake – Dice
 - (C) Dice – Cup – Dice
 - (D) Dice – Snake – Dice
- (2) The play symbols and play symbol captions in the row are consistent with those specified in SECTION 4 of this document.
- (3) The three (3) play symbols and play symbol captions in the row are bisected by a pink arrow.
- (4) 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 document, the holder of a valid pull-tab ticket for pull-tab game number 025 containing a match winning row is entitled to a prize the amount and the approximate number [sic., numbers] of which are as follows:

Matching Play Symbol Captions	Prize Amount	Approximate Number of Prizes
Dice – Dealer – Dice	\$.25	552,684
Dice – Rake – Dice	\$1	104,280
Dice – Cup – Dice	\$3	20,856
Dice – Snake – Dice	\$50	5,214

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SECTION 7. A total of approximately three million five hundred thousand (3,500,000) pull-tab tickets will be initially available for pull-tab game number 025. The odds of winning a prize in pull-tab game 025 are approximately 1 in 5.13. 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 025 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab retailer.

LSA Document #04-305(E)

Filed with Secretary of State: December 1, 2004, 2:30 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-306(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 024. Effective December 1, 2004.

SECTION 1. The name of this pull-tab game is "Pull-Tab Game Number 024, Red Hot Cash".

SECTION 2. Pull-tab tickets for pull-tab game number 024 shall sell for fifty cents (\$0.50) per ticket.

SECTION 3. Pull-tab game number 024 is a criss-cross game.

SECTION 4. A pull-tab ticket in pull-tab game number 024 shall contain fifteen (15) play symbols and play symbol captions arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 024 shall consist of the following possible play symbols:

- (1) A picture of a dollar sign with flames
DOLLAR SIGN
- (2) A picture of a 7 with flames
SEVEN
- (3) A picture of a diamond with flames
DIAMOND
- (4) A picture of dice with flames
DICE
- (5) A picture of cherries with flames
CHERRIES
- (6) A picture of a bunch of grapes
GRAPES
- (7) A picture of a star
STAR

- (8) A picture of cherries with ice cube
ICE CUBE

SECTION 5. A line on a pull-tab ticket in pull-tab game number 024 which contains three (3) identical play symbols of dollar signs, sevens, diamonds, dice, or cherries is not a criss-cross winning combination unless all of the following are true:

- (1) The play symbols and play symbol captions in the line are consistent with those specified in SECTION 4 of this document.
- (2) The three (3) play symbols and play symbol captions in the line are bisected by a pink arrow.
- (3) The prize amount appears on the left side of the line in red ink on a yellow box.

SECTION 6. Subject to SECTION 5 of this document, the holder of a valid pull-tab ticket for pull-tab game number 024 containing a criss-cross winning combination is entitled to a prize the amount and the approximate number [*sic.*, *numbers*] of which are as follows:

Matching Play Symbol in Criss-Cross Winning Combination	Prize Amount	Approximate Number of Prizes
3 cherries	\$50	182,172
3 dice	\$1	66,975
3 diamond	\$3	8,037
3 seven	\$10	5,358
3 dollar sign	\$130	2,679

SECTION 7. A total of approximately one million eight hundred thousand (1,800,000) pull-tab tickets will be initially available for pull-tab game number 024. The odds of winning a prize in pull-tab game 024 are approximately 1 in 6.79. 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 024 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab ticket retailer.

LSA Document #04-306(E)

Filed with Secretary of State: December 1, 2004, 2:30 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-307(E)

DIGEST

Temporarily amends 312 IAC 18-3 under the article pertaining to entomology and plant pathology to regulate the emerald

ash borer (*Agrilus planipennis*) as a pest or pathogen, to provide standards for quarantine in Jamestown Township and Millgrove Township in Steuben County, as well as Clay Township and Van Buren Township in LaGrange County, which are infested with the species, and to add a definition of "eradication area". Repeals LSA Document #04-264(E), printed at 28 IR 616 (November 1, 2004). Effective December 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 or the U.S. Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the U.S. Department of Agriculture 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) "Eradication area" means the area including all plants infected by emerald ash borer and any other ash species within one-half (½) mile radius of an infected plant.**
- (4) "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.**
- (5) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this SECTION.**
- (6) "Move" means to ship, offer for shipment, receive for transportation, transport, carry, or allow to move or to ship.**

(c) The following counties include an infested area and are regulated under this document:

- (1) Jamestown Township, Steuben County;**
- (2) Millgrove Township, Steuben County;**
- (3) Clay Township, LaGrange County; and**
- (4) Van Buren 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 limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.**
- (4) An ash log, slab, or untreated ash lumber with bark attached.**
- (5) Composted and noncomposted ash chips and com-**

posted and noncomposted 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 nonconiferous 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

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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.

(m) Any ash species within the eradication area will be removed and rendered incapable of supporting emerald ash borer life stages.

(n) Regulated articles from another infested state or any part of a state infested with emerald ash borer are prohibited entry into Indiana without an accompanying certificate of inspection or phytosanitary document issued by the U.S. Department of Agriculture or the plant health regulatory agencies of the originating state.

(o) Harvest for timber or other use of the wood of any non-ash forest species within the eradication area is prohibited until after all ash has been removed and the site is released by the state entomologist or his designee.

(p) It is a violation of this SECTION to move ash, in any form, out of the eradication area without a compliance agreement signed by the state entomologist or his designee.

SECTION 2. LSA Document #04-264(E) IS REPEALED.

SECTION 3. SECTION 1 of this document expires the earlier of November 30, 2005, or the effective date of LSA Document #04-177.

LSA Document #04-307(E)

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

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-308(E)

DIGEST

Temporarily amends 312 IAC 9-4-5, which governs annual seasons, bag limits, hunting restrictions, and shooting hours for taking geese, to establish provisions in spring 2005 for taking lesser snow geese and Ross's geese in support of a federal effort to control the numbers of these mid-continent light geese (MCLG). Effective February 1, 2005.

SECTION 1. In addition to licensing requirements under IC 14-22-7, IC 14-22-11-1, 50 CFR 20, and 50 CFR 21, a person must obtain a permit issued by the department to take a lesser snow goose (*Anser caerulescens caerulescens*) or a Ross's goose (*Anser rossii*) from February 1, 2005, through March 31, 2005. A person taking a goose under this SECTION is exempted from the requirements under 312 IAC 9-4-2 to register for and possess an identification number through the Harvest Information Program.

SECTION 2. SECTION 1 of this document expires April 1, 2005.

LSA Document #04-308(E)

Filed with Secretary of State: December 3, 2004, 12:00 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-314(E)

DIGEST

Repeals LSA Document #04-262(E), which closed a portion of the East Fork, White River and properties managed by the Department of Natural Resources in proximity to Williams Dam, in order to perform repairs, which are now suspended due to high water levels and not expected to resume until the summer of 2005, to Williams Dam. Effective December 8, 2004.

SECTION 1. LSA Document #04-262(E) IS REPEALED.

LSA Document #04-314(E)

Filed with Secretary of State: December 8, 2004, 2:35 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-315(E)

DIGEST

Temporarily amends 312 IAC 9 with respect to the taking of beavers at Pokagon State Park and Shakamak State Park because the director of the department of natural resources, with awareness that the regulation of wild animals in Indiana is the responsibility of the department of natural resources and that the director is responsible for controlling wild animals in a state park if the wild animals pose an unusual hazard to the health or safety of one or more individuals, finds that beavers are causing damage to plant communities by raising water levels in a dedicated nature preserve and flooding portions of the hiking trails and associated boardwalks at Pokagon State Park and that beavers within Shakamak State Park have cut down trees along the lakeshore in the recreation area causing water to back up in the outlet stream of Lake Kickapoo onto the toe of the dam. Effective December 8, 2004.

SECTION 1. (a) Notwithstanding 312 IAC 9-2-11, 312 IAC 8-2, and any other provision governing taking a wild animal within a state park, an individual qualified under this SECTION may take any beaver within the following:

- (1) Pokagon State Park, Steuben County; and**
- (2) Shakamak State Park, Clay County, Greene County, and Sullivan County.**

(b) In order to qualify under subsection (a), a person must satisfy both of the following requirements:

- (1) Possess written authorization from the property manager of the state park within which the person intends to act under this document.**
- (2) Possess a nuisance wild animal control permit issued under 312 IAC 9-10-11.**

SECTION 2. SECTION 1 of this document expires December 9, 2005.

LSA Document #04-315(E)

Filed with Secretary of State: December 8, 2004, 2:35 p.m.

Notice of Rule Adoption

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #04-77

Under IC 12-8-3-4.4, LSA Document #04-77, printed at 27 IR 2837, amending the child care home rules found at 470 IAC 3-1.1, 470 IAC 3-1.2, and 470 IAC 3-1.3 was adopted by the director of the division of family and children on December 6, 2004. The rule that was adopted is a different version than the proposed rule, which was published in the Indiana Register on June 1, 2004.

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #03-130

The Water Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of LSA Document #03-130, printed at 28 IR 644, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

*Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on **January 12, 2005** at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on a proposed new rule concerning a streamlined mercury variance process for obtaining a variance from the existing water quality criterion used to establish a water quality-based effluent limitation for mercury in wastewater discharges permitted under the National Pollutant Discharge Elimination System (NPDES) program.*

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 can be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or (800) 451-6027 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register. Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

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

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers also may contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor West, Room 1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method
Deputy Commissioner
Indiana Department of Environmental Management

TITLE 878 HOME INSPECTORS LICENSING BOARD

LSA Document #04-191

The Home Inspectors Licensing Board gives notice that the date of the public hearing for consideration of final adoption of LSA Document #04-191, printed at 28 IR 1060, 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 **February 1, 2005**, at 9:05 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the Home Inspectors Licensing Board will hold a public hearing on proposed rules concerning definitions, educational and licensing requirements, license renewal requirements, fees, continuing education requirements, standards for the competent performance of home inspections, code of ethics, and standards for home inspection reports prepared by home inspectors to implement the home inspector program under IC 25-20.2. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Gerald H. Quigley
Executive Director
Professional Licensing Agency

Notice of Intent to Adopt a Rule

TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #04-324

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

OVERVIEW: Adds 45 IAC 3.1-1-155 concerning the capital investment tax credit as it applies to businesses located in Shelby County. Statutory authority: IC 6-3.1-13.5-13.

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

LSA Document #04-309

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

OVERVIEW: The rule will amend 355 IAC 4-2 to delete reference to a turf pest control technician examination that no longer exists and to delete the requirement to have both an applicant's and his or her supervisor's signature on an application form to become a registered technician. Questions concerning the proposed rule may be directed to David Scott at (765) 494-1587, or scottde@purdue.edu, or the Office of the Indiana State Chemist, 175 South University Street, West Lafayette, Indiana, 47907-2063. Statutory authority: IC 15-3-3.5-11; IC 15-3-3.6-4; IC 15-3-3.6-10.1.

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

LSA Document #04-310

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

OVERVIEW: Amends 355 IAC 4-5 to clarify activities authorized to be performed by individuals holding a category 7b for hire applicator license or technician registration, to add a definition of termiticide, to clarify the type and scope of information required to be kept as part of the termiticide application records, to add a requirement for applicators to file customer disclosure forms with the state chemist, to delete the one year experience and termiticide application record submission requirement for licensing, to delete redundant technician registration procedures that are addressed more accurately in another rule, and to delete redundant noncertified applicator supervision requirements that are addressed more accurately in another rule. Questions regarding the proposed rule may be directed to David Scott at (765)

494-1587, or scottde@purdue.edu or the Office of Indiana State Chemist, 175 South University Street, West Lafayette, Indiana, 47907-2063. Statutory authority: IC 15-3-3.6-4; IC 15-3-3.6-5.

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

LSA Document #04-311

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

OVERVIEW: This rule will amend 355 IAC 4-6 to delete redundant licensed applicator for hire supervision requirements that are addressed more accurately in another rule, to delete redundant technician registration procedures that are addressed more accurately in another rule, and to delete redundant uncertified applicator supervision requirements that are addressed more accurately in another rule. Questions regarding the proposed rule may be directed to David Scott at (765) 494-1587, or scottde@purdue.edu or the Office of Indiana State Chemist, 175 South University Street, West Lafayette, Indiana, 47907-2063. Statutory authority: IC 15-3-3.6-5.

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

LSA Document #04-312

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

OVERVIEW: The proposed rules provide editorial and technical revisions to the general provisions and bulk storage containment rules under the Indiana commercial fertilizer law. The primary focus of revision is in rule 2, dealing with containment of liquid and dry fertilizer materials. These changes provide consistency with the recently revised pesticide containment rules and clarification on handling of fluid and dry fertilizer with specific emphasis on prohibition of drains in containment areas and requirement for prompt cleanup of material in storage areas. Questions concerning the proposed rules may be directed to Michael R. Hancock at (765) 494-1547, or the Office of Indiana State Chemist, Purdue University, 175 S. University Street, West Lafayette, Indiana 47907-2063. Statutory authority: IC 15-3-3-12.

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

LSA Document #04-319

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 405 IAC 2-2-3 to change the Medicaid disability durational requirement from four years to 12 months. This change is being made to conform to IC 12-14-15-1 as amended by P.L.218-2003, SECTION 1, effective July 1, 2003. Amends 405 IAC 2-9 to specify that, in order to be eligible for Medicaid for employees with disabilities, an individual must have monthly earned income that exceeds the \$65 earned income disregard. This requirement will not apply to recipients who are temporarily involuntarily unemployed as set out in 405 IAC 2-9-5(c). Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-41-15.

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

LSA Document #04-321

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 405 IAC 1-1-3 and 405 IAC 2-3-10 and adds new rules governing procedures for the automation of Medicaid spend-down eligibility determinations. Instead of the local Offices of Family and Children manually accounting for the recipients' incurred medical expenses and establishing a specific Medicaid effective date each month, providers will submit claims for medical services rendered to the Medicaid fiscal contractor who will deduct the spend-down amount and pay the claims accordingly. Will specify conditions under which providers can bill Medicaid recipients for all or part of the spend-down amount. Will specify procedures for certain types of medical expenses that cannot be handled through the automated process, such as the recipients' bills incurred prior to the Medicaid covered period or by non-Medicaid providers, and bills for nonrecipient spouses. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #04-316

Under IC 4-22-2-23, the Division of Family and Children intends to adopt a rule concerning the following:

OVERVIEW: Amends 470 IAC 3-11, 470 IAC 3-12, 470 IAC 3-14, and 470 IAC 3-15 to alter various provisions. Statutory authority: IC 12-13-5-3; IC 12-17-4-2-4.

**TITLE 511 INDIANA STATE BOARD OF
EDUCATION**

LSA Document #04-317

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

OVERVIEW: Amends 511 IAC 6.1-5.1 to add, delete, and rename approved high school courses in the multidisciplinary, business technology education and technology education, and vocational-technical program areas. Effective 30 days after filing with the secretary of state. Statutory authority: IC 20-1-1-6; IC 20-1-1.2-18.

**TITLE 675 FIRE PREVENTION AND BUILDING
SAFETY COMMISSION**

LSA Document #04-323

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: To amend the 2003 Indiana Building Code, 675 IAC 13-2.4, and the 2003 Indiana Fire Code, 675 IAC 22-2.3, by adopting the latest editions of NFPA Standards 10, 11, 12, 15, 17, 17A, 25, 33, 34, 37, 50, 50B, 51, 51B, 52, 59, 59A, 72, 82, 86, 385, 407, 704, 1123, and 2001. To repeal outdated editions of the foregoing NFPA standards. Public comments are invited and may be directed to the Department of Fire and Building Services, Attention: Technical Services, Indiana Government Center- South, 402 West Washington Street, Room W246, Indianapolis, Indiana 46204 or by e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

**TITLE 820 STATE BOARD OF COSMETOLOGY
EXAMINERS**

LSA Document #04-322

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

OVERVIEW: Amends 820 IAC 2-2-3 to establish the procedures for examination candidates that fail to successfully

Notice of Intent to Adopt a Rule

pass the state board examinations under IC 25-8 after three years. 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 via e-mail at pla12@pla.state.in.us. Statutory authority: IC 25-1-8-5.

TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

LSA Document #04-313

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

OVERVIEW: Amends 836 IAC 1 to add definitions relating to emergency medical dispatch. Adds 836 IAC 5 to establish requirements and provisions applicable to the certification and regulation of emergency medical dispatch agencies and emergency medical dispatchers to implement Indiana Code 16-31-3.5. Moves 836 IAC 1-4-1 to 836 IAC 5 and makes appropriate technical and substantive amendments. Questions or comments on the adoption may be directed by mail to the Indiana Emergency Medical Services Commission, Indiana Government Center-South, 302 W. Washington Street, Room E208, Indianapolis, Indiana 46204 or by electronic mail to rstamp@sema.in.gov. Statutory authority: IC 16-31-2-7; IC 16-31-3-14; IC 16-31-3-14.5; IC 16-31-3-20; IC 16-31-3.5-7.

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #04-325

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

OVERVIEW: Amends 844 IAC 5-1 and 844 IAC 5-2 to clarify the standards of professional conduct and competent practice of medicine. Questions or comments concerning the proposed rules may be directed to: Medical Licensing Board of Indiana, Health Professions Bureau, Attn: Board Director, 402 West Washington Street, Room W066, Indianapolis, IN 46204 or via e-mail at ajones@hpb.in.gov. Statutory authority: IC 25-22.5-2-7.

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule

LSA Document #04-177

DIGEST

Adds 312 IAC 18-3-18 concerning entomology and plant pathology to regulate the emerald ash borer (*Agrilus planipennis*) as a pest or pathogen, to provide standards for quarantine in a county infested with the species, and to provide standards for quarantine of areas infested with the species. Effective 30 days after filing with the secretary of state.

312 IAC 18-3-18

SECTION 1. 312 IAC 18-3-18 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-18 Control of the emerald ash borer

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 18. (a) The emerald ash borer (Coleoptera: Buprestidae: *Agrilus planipennis*) is a pest or pathogen and is regulated under this section.

(b) The definitions in 312 IAC 1, 312 IAC 18-1, and as follows apply throughout this section:

(1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist or the U.S. Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the U.S. Department of Agriculture 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) "Eradication area" means the area including all plants infected by the emerald ash borer and any other ash species within one-half (½) mile radius of an infected plant.

(4) "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.

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

(6) "Move" means to:

- (A) ship;
- (B) offer for shipment;
- (C) receive for transportation;
- (D) transport;

(E) carry; or

(F) allow to move or ship.

(c) The following counties include an infested area and are regulated under this section:

- (1) Clay Township and Van Buren Township in LaGrange County.
- (2) Jamestown Township and Millgrove Township in Steuben 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 limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.
- (4) An ash log, slab, or untreated ash lumber with bark attached.
- (5) Composted and noncomposted ash chips and composted and noncomposted 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 the spread of the emerald ash borer.
- (7) Cut firewood of any nonconiferous 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 the 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 Fahrenheit, 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 Fahrenheit or higher if the article is:

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- (A) shipped in an enclosed vehicle; or
- (B) 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 Fahrenheit, 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 Fahrenheit or higher, if the article is:
 - (A) shipped in an enclosed vehicle; or
 - (B) 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 section.

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

(m) Any ash species within the eradication area shall be removed and rendered incapable of supporting a life stage of the emerald ash borer.

(n) Regulated articles from another infested state or any part of a state infested with the emerald ash borer are prohibited entry into Indiana without an accompanying certificate of inspection or phytosanitary document issued by the U.S. Department of Agriculture or the plant health regulatory agencies of the originating state.

(o) Harvest for timber or other use of the wood of any non-ash forest species within the eradication area is prohibited until after all ash has been removed and the site is released by the state entomologist or his or her designee.

(p) A person must not move ash, in any form, from the eradication area without a compliance agreement signed by the state entomologist or his or her designee. (*Natural Resources Commission; 312 IAC 18-3-18*)

Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on January 24, 2005 at 11:30 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 a proposed new rule to regulate the emerald ash borer (*Agrilus planipennis*) as a pest or pathogen, to provide standards for quarantine in a county infested with the species, and to provide standards for quarantine of areas infested with the species. 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 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #04-263

DIGEST

Amends 312 IAC 3-1-7, which governs the filing and service of pleadings and documents with the natural resources commission under IC 4-21.5, to conform the rule section to IC 4-21.5 with respect to private carriers, to authorize filing and service to be made by U.S. priority or express mail, and to recognize notice and service by publication. Makes other technical changes. Effective 30 days after filing with the secretary of state.

312 IAC 3-1-7

SECTION 1. 312 IAC 3-1-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-7 Filing and service of pleadings and documents

Authority: IC 14-10-2-4

Affected: IC 4-21.5-3-1; IC 4-21.5-3-29; IC 4-21.5-5; IC 14; IC 23-1-20-15; IC 25

Sec. 7. (a) **Pleadings and documents shall must** be filed with the administrative law judge and served on all other parties.

(b) The filing of a **pleading or** document with the administrative law judge may be performed by **any of the following**:

- (1) Personal delivery.
- (2) **United States mail under any of the following categories:**
 - (A) First class. ~~mail~~;
 - (B) Certified. ~~mail~~;
 - (C) **Express.**
 - (D) **Priority.**
- (3) **Private carrier.**
- (4) Interoffice mail. ~~fax, or~~
- (5) **Facsimile mail.**
- (6) Electronic mail.

(c) If a ~~party is represented by~~ an attorney or another authorized representative **represents a party**, service of a **pleading or** document must be made upon the attorney or other authorized representative. If an individual appears without separate representation, service must be made upon the individual.

(d) Filing or service is complete ~~upon deposit in~~ **on the earliest of the following dates**:

- (1) **The date on which the pleading or document is delivered.**
- (2) **The date of the postmark on the envelope containing the pleading or document if the pleading or document is sent by a category of United States mail described in subsection (b)(2) and is properly addressed. and first class or certified post prepaid; filing or service by another method is complete upon receipt.**
- (3) **The date on which the pleading or document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the pleading or document is sent by a private carrier and is properly addressed.**
- (4) **The date of receipt of the pleading or document, if the date of deposit or postmark cannot be determined.**

(e) This section does not modify the time in which a party may file objections under IC 4-21.5-3-29 or a petition for judicial review under IC 4-21.5-5.

(f) **IC 4-21.5-3-1(d) and IC 4-21.5-3-1(e) govern service by publication.**

(g) **As used in this section, "private carrier" means a person, other than the United States Postal Service, that delivers mail as defined in IC 23-1-20-15.** (*Natural Resources Commission; 312 IAC 3-1-7; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1319; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 26, 2005 at 9:30 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 a proposed amendment concerning the filing and service of pleadings and documents with the natural resources commission under IC 4-21.5 to conform the rule section to IC 4-21.5 with respect to private carriers, to authorize filing and service to be made by U.S. priority or express mail, and to recognize notice and service by publication. 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 312 NATURAL RESOURCES COMMISSION

Proposed Rule

LSA Document #04-270

DIGEST

Amends 312 IAC 18-3-12, 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. Effective 30 days after filing with the secretary of state.

312 IAC 18-3-12

SECTION 1. 312 IAC 18-3-12 IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-3-12 Control of larger pine shoot beetles

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 12. (a) The larger pine shoot beetle (*Tomicus piniperda*) is a pest or pathogen. This section governs standards for the control of the larger pine shoot beetle in Indiana.

(b) Except as provided in subsection (c), the division has determined Indiana is an infested area where the larger pine shoot beetle is present.

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(c) Exempted from subsection (b) are the following counties:

- (1) Clark.
- (2) Clay.
- (3) Crawford.
- (4) Daviess.
- (5) Dearborn.
- ~~(6) Decatur.~~
- ~~(7) (6)~~ Dubois.
- ~~(8) (7)~~ Floyd.
- ~~(9) (8)~~ Gibson.
- ~~(10) (9)~~ Greene.
- ~~(11) (10)~~ Harrison.
- ~~(12) (11)~~ Jackson.
- ~~(13) (12)~~ Jefferson.
- ~~(14) Jennings.~~
- ~~(15) (13)~~ Knox.
- ~~(16) (14)~~ Lawrence.
- ~~(17) (15)~~ Martin.
- ~~(18) (16)~~ Ohio.
- ~~(19) (17)~~ Orange.
- ~~(20) (18)~~ Perry.
- ~~(21) (19)~~ Pike.
- ~~(22) (20)~~ Posey.
- ~~(23) Ripley.~~
- ~~(24) (21)~~ Scott.
- ~~(25) (22)~~ Spencer.
- ~~(26) (23)~~ Sullivan.
- ~~(27) (24)~~ Switzerland.
- ~~(28) Union.~~
- ~~(29) (25)~~ Vanderburgh.
- ~~(30) Vigo.~~
- ~~(31) (26)~~ Warrick.
- ~~(32) (27)~~ Washington.

(d) The following items are regulated articles:

- (1) The larger pine shoot beetle in any life stage.
- (2) Entire plants or parts of the genus pine (*Pinus* spp.). Exempted from this subdivision are plants that conform to each of the following:

(A) Are less than thirty-six (36) inches high.

(B) Are one (1) inch in basal diameter or less.

- (3) Logs and lumber of pine with bark attached. Exempted from this subdivision are logs of pine and pine lumber with bark attached if:

(A) the source tree was felled during the period of July through October; and

(B) the logs and lumber are shipped from the quarantined area during the period of July through October.

- (4) Any other article, product, or means of conveyance if determined by the division director to present the risk of spread of the larger pine shoot beetle.

(e) The following actions are ordered within the infested area:

- (1) The movement by a person of a regulated article to a destination outside the infested area is prohibited, except

under the following conditions:

(A) A thorough examination of all nursery stock takes place on a piece by piece basis.

(B) A statistically based examination of Christmas trees is made according to the following schedules:

TABLE 1. PAINTED (COLOR-ENHANCED)
PINE CHRISTMAS TREES¹

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 72	All	700 – 800	120
73 – 100	73	801 – 900	121
101 – 200	96	901 – 1,000	122
201 – 300	106	1,001 – 2,000	126
301 – 400	111	2,001 – 3,000	127
401 – 500	115	3,001 – 5,000	128
501 – 600	117	5,001 – 10,000	129
601 – 700	119	10,001 or more	130

¹If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, “All trees that remain unsold as of December 25 must be destroyed by burning or chipping or must be fumigated prior to January 1.”.

TABLE 2. NATURAL (UNPAINTED)
CHRISTMAS TREES¹

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 57	All	501 – 600	80
58 – 100	58	601 – 700	81
101 – 200	69	701 – 1,000	82
201 – 300	75	1,001 – 3,000	84
301 – 400	77	3,001 – 10,000	85
401 – 500	79	10,001 or more	86

¹If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, “All trees that remain unsold as of December 25 must be destroyed by burning or chipping or must be fumigated prior to January 1.”.

(C) Following the examination, a determination is made that no life stages of the larger pine shoot beetle are present. The determination must be accompanied by either of the following:

(i) A certificate of inspection approved by the division.

(ii) A certificate or similar authorization issued by the U.S. Department of Agriculture under a parallel federal quarantine.

(D) The certificate for the absence of the larger pine shoot beetle must be attached to and remain on the regulated

articles until the articles reach their destinations. This requirement is, however, satisfied if the certificate is attached to the shipping document and the regulated article is adequately described on the shipping document of the certificate.

(2) A regulated article originating outside the infested area may move through the infested area without a certificate of inspection if the point of origin of the regulated article is indicated on the waybill or shipping documents and transportation conforms with this subdivision. Passage through the infested area must be made without stopping, except for refueling or traffic conditions, and shall be conducted within either of the following conditions:

(A) The ambient temperature is below fifty (50) degrees Fahrenheit.

(B) The regulated article is carried in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle. Examples of an adequate covering include canvas, plastic, or loosely woven cloth.

(3) A regulated article originating outside the infested area ~~which~~ **that** is moved into the infested area and exposed to potential infestation by the larger pine shoot beetle is considered to have originated from the infested area. Any regulated article under this subdivision is controlled by subdivision (1).

(4) The movement of a regulated article from an infested area through any noninfested area to another infested area is prohibited without a certificate for the absence of the larger pine shoot beetle except where both of the following conditions are met:

(A) Passage through a noninfested area is made without stopping, except for refueling or traffic conditions, if the ambient temperature is below fifty (50) degrees Fahrenheit or if in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle.

(B) The waybill or shipping documents accompanying any shipment of regulated articles within or through Indiana indicate the county and state of origin of the regulated articles.

(5) Any regulated article imported or moved within Indiana in violation of this section shall be immediately removed from any noninfested area or destroyed. The expense of compliance with this subdivision is the joint and several responsibility of any person possessing or owning the regulated article. Compliance with this subsection shall be performed under the direction of the division director.

(6) In addition to the penalty set forth in subdivision (5), a person who violates this section is subject to any administrative, civil, or criminal sanction set forth in IC 14-24 and this article.

(7) This section does not preclude the division director from issuing any permit under section 3 of this rule.

(Natural Resources Commission; 312 IAC 18-3-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1273; filed Feb 9, 1999, 4:16 p.m.: 22 IR 1945; filed Apr 4, 2001, 3:02 p.m.: 24 IR 2404; filed May 16, 2002, 12:28 p.m.: 25 IR 3049; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 19, 2003, 8:50 a.m.: 26 IR 3313)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 24, 2005 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 a proposed amendment concerning the control of larger pine shoot beetles to add Decatur County, Jennings County, Ripley County, Union County, and Vigo County to the quarantine area. 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 327 WATER POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #04-13

DIGEST

Amends drinking water rules at 327 IAC 8-2, 327 IAC 8-2.1, and 327 IAC 8-2.6 concerning radionuclides, long term 1 enhanced surface water treatment, arsenic, minor corrections to interim enhanced surface water treatment, disinfectants and disinfection byproducts, lead and copper, public notification, and analytical methods for public drinking water systems. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: #04-13(WPCB), February 1, 2004, Indiana Register (27 IR 1656).

Second Notice of Comment Period and Notice of First Hearing: #04-13(WPCB), September 1, 2004, Indiana Register (27 IR 4149).

Change in Notice of Public Hearing: #04-13 (WPCB), November 1, 2004, Indiana Register (28 IR 620).

Date of First Hearing: November 23, 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 (preliminarily adopted) rule is not substantively different from the draft rule published on September 1, 2004, at 27 IR 4149, the Indiana Department of Environmental Management (IDEM) is not requesting comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from September 1, 2004, through September 30, 2004, on IDEM's draft rule language. No comments

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were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On November 23, 2004, the water pollution control board conducted the first public hearing/board meeting concerning amendments to drinking water rules at 327 IAC 8-2, 327 IAC 8-2.1, and 327 IAC 8-2.6 regarding radionuclides, long term 1 enhanced surface water treatment, arsenic, minor corrections to interim enhanced surface water treatment, disinfectants and disinfection byproducts, lead and copper, public notification, and analytical methods for public drinking water systems. No comments were made at the first hearing.

327 IAC 8-2-1	327 IAC 8-2-45
327 IAC 8-2-4	327 IAC 8-2-46
327 IAC 8-2-4.1	327 IAC 8-2.1-3
327 IAC 8-2-4.2	327 IAC 8-2.1-4
327 IAC 8-2-5.1	327 IAC 8-2.1-6
327 IAC 8-2-5.2	327 IAC 8-2.1-8
327 IAC 8-2-5.5	327 IAC 8-2.1-9
327 IAC 8-2-8.5	327 IAC 8-2.1-14
327 IAC 8-2-8.7	327 IAC 8-2.1-16
327 IAC 8-2-9	327 IAC 8-2.1-17
327 IAC 8-2-10.1	327 IAC 8-2.6-1
327 IAC 8-2-10.2	327 IAC 8-2.6-2
327 IAC 8-2-10.3	327 IAC 8-2.6-2.1
327 IAC 8-2-13	327 IAC 8-2.6-3
327 IAC 8-2-34	327 IAC 8-2.6-4
327 IAC 8-2-34.1	327 IAC 8-2.6-5

SECTION 1. 327 IAC 8-2-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-1 Definitions

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16

Affected: IC 13-11-2; IC 13-18

Sec. 1. In addition to the definitions contained in IC 13-11-2 and 327 IAC 1, the following definitions apply throughout this rule, 327 IAC 8-2.1, 327 IAC 8-2.5, and 327 IAC 8-2.6:

- (1) "Act" means the Safe Drinking Water Act (42 U.S.C. 300f et seq.).
- (2) "Action level" means the concentration of lead or copper in water specified in section 36(c) of this rule ~~which that~~ determines, in some cases, the treatment requirements contained in sections 36 through 47 of this rule that a water system is required to complete.
- (3) "Adjustment program" means the addition of fluoride to drinking water by a public water system for the prevention of dental cavities.
- (4) "Administrator" means the administrator of the U.S. EPA.
- (5) "Best available technology" or "BAT" means best technology, treatment techniques, or other means ~~which that~~ the commissioner finds are available, after examination for efficacy under field conditions, and not solely under laboratory conditions, and after taking cost into consideration. For the purpose of setting ~~maximum contaminant levels~~ **MCLs** for synthetic organic chemicals, any BAT must be at least as

effective as granular activated carbon.

(6) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

(7) "Commissioner" means the commissioner of the Indiana department of environmental management or the designated agent of the commissioner.

(8) "Community water system" or "CWS" means a public water system ~~which that~~ serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(9) "Compliance cycle" means the nine (9) year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three (3) three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.

(10) "Compliance period" means a three (3) year calendar year period within a compliance cycle. Each compliance cycle has three (3) three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001. Within the second compliance cycle, the first compliance period runs from January 1, 2002, to December 31, 2004; the second from January 1, 2005, to December 31, 2007; and the third from January 1, 2008, to December 31, 2010. Within the third compliance cycle, the first compliance period runs from January 1, 2011, to December 31, 2013; the second from January 1, 2014, to December 31, 2016; and the third from January 1, 2017, to December 31, 2019.

(11) "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with 327 IAC 8-2.6-1, the ~~comprehensive performance evaluation~~ **CPE** must consist of at least the following components:

- (A) Assessment of plant performance.
- (B) Evaluation of major unit processes.
- (C) Identification and prioritization of performance limiting factors.
- (D) Assessment of the applicability of comprehensive technical assistance.
- (E) Preparation of a CPE report.

(12) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(13) "Contaminant" means any:

- (A) microorganisms;

- (B) chemicals;
- (C) waste;
- (D) physical substance;
- (E) radiological substance; or
- (F) any wastewater;

introduced or found in the drinking water.

(14) "Conventional filtration treatment" means a series of processes including:

- (A) coagulation;
- (B) flocculation;
- (C) sedimentation; and
- (D) filtration;

resulting in substantial particulate removal.

(15) "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(16) "CT" or "CTcalc" is the product of residual disinfectant concentration (C) in milligrams per liter determined before or at the first customer and the corresponding disinfectant contact time (T) in minutes, such as $C \times T$. If a public water system applies disinfectants at more than one (1) point prior to the first customer, ~~it~~ **the public water system** must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point. CT_{99.9} is the CT value required for ninety-nine and nine-tenths percent (99.9%) (3-log) inactivation of Giardia lamblia cysts. CT_{99.9} for a variety of disinfectants and conditions appears in Tables 1.1-1.6, 2.1, and 3.1 of ~~para-~~**graph 40 CFR 141.74(b)(3)**¹.

$$\frac{CT_{calc}}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios or total inactivation ratio shown as:

$$\sum \frac{(CT_{calc})}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one (1.0) is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(17) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which:

- (A) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and
- (B) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(18) "Direct filtration" means a series of processes, including

coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(19) "Disinfectant" means any oxidant, including, but not limited to:

- (A) chlorine;
- (B) chlorine dioxide;
- (C) chloramines; and
- (D) ozone;

added to water in any part of the treatment or distribution process that is intended to kill or inactivate pathogenic microorganisms.

(20) "Disinfectant contact time" (T in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one (1) C is measured, T is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one (1) C is measured, T is:

- (A) for the first measurement of C, the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured; and
- (B) for subsequent measurements of C, the time in minutes that it takes for water to move from the previous C measurement point to the C measurement point for which the particular T is being calculated.

Disinfectant contact time in pipelines must be calculated based on plug flow by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

(21) "Disinfection" means a process ~~which~~ **that** inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(22) "Disinfection profile" means a summary of daily Giardia lamblia inactivation through a treatment plant. **The procedure for developing a disinfection profile is contained in 327 IAC 8-2.6-2 for systems serving at least ten thousand (10,000) individuals and 327 IAC 8-2.6-2.1 for systems serving fewer than ten thousand (10,000) individuals.**

(23) "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(24) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRUM).

(25) "Drinking water violation" means violations of the

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~~maximum contaminant level~~ MCL, treatment technique (TT), monitoring requirements, and testing procedures in this rule. 327 IAC 8-2.1-16 identifies the tier assignment for each specific violation or situation requiring a public notice.

(26) "Effective corrosion inhibitor residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe for the purpose of sections 36 through 47 of this rule only.

(27) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(28) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(29) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

(30) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(31) "First draw sample" means a one (1) liter sample of tap water collected in accordance with section 37 of this rule, that has been standing in the plumbing pipes at least six (6) hours and is collected without flushing the tap.

(32) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(33) "GAC10" means granular activated carbon filter beds with an empty-bed contact time of ten (10) minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty (180) days.

(34) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(35) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(36) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or, for Subpart H systems serving at least ten thousand (10,000) individuals ~~only and beginning January 1, 2005, systems serving fewer than ten thousand (10,000) individuals~~, *Cryptosporidium*; or

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH ~~which that~~ closely correlate to climatological or surface water conditions.

Direct influence must be determined for individual sources in accordance with criteria established by the commissioner. The commissioner's determination of direct influence may be

based on site-specific measurements of water quality ~~and/or~~ **or** documentation of well construction characteristics and geology with field evaluation **or both**.

(37) "Haloacetic acids (five)" or "HAA5" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds:

(A) monochloroacetic acid;

(B) dichloroacetic acid;

(C) trichloroacetic acid;

(D) monobromoacetic acid; and

(E) dibromoacetic acid;

rounded to two (2) significant figures after addition.

(38) "Halogen" means one (1) of the chemical elements chlorine, bromine, or iodine.

(39) "Initial compliance period" means January 1993 to December 1995, for the contaminants listed in sections 4 (other than arsenic, barium, cadmium, fluoride, lead, mercury, selenium, and silver), 5, and 5.4(a) (other than benzene, vinyl chloride, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, and para-dichlorobenzene) of this rule.

(40) "Large water system" means a water system that serves more than fifty thousand (50,000) people for the purpose of sections 36 through 47 of this rule only.

(41) "Lead service line" means a service line made of lead ~~which that~~ connects the water main to the building inlet and any lead pigtail, gooseneck, or other fitting ~~which that~~ is connected to such lead line.

(42) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(43) "Manmade beta particle and photon emitters" means all radionuclides emitting beta particle ~~and/or or~~ **or** photons, **or both**, listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure", NBS Handbook 69, as amended August 1973, U.S. Department of Commerce, except the daughter products of thorium-232, uranium-235, and uranium-238.

(44) "Maximum contaminant level" **or** "MCL" means the maximum permissible level of a contaminant in water ~~which that~~ is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

(45) "Maximum contaminant level goal" **or** "MCLG" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur and ~~which that~~ includes an adequate margin of safety. ~~Maximum contaminant level goals~~ **MCLGs** are nonenforceable health goals.

(46) "Maximum residual disinfectant level" or "MRDL"

means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

(47) "Maximum residual disinfectant level goal" or "MRDLG" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of individuals would occur and ~~which that~~ allows an adequate margin of safety.

(48) "Maximum total trihalomethane potential" or "MTP" means the maximum concentration of ~~total trihalomethanes~~ **TTHM** produced in a given water containing a disinfectant residual after seven (7) days at a temperature of twenty-five (25) degrees Celsius or above.

(49) "Medium size water system" means a water system that serves greater than three thousand three hundred (3,300) and less than or equal to fifty thousand (50,000) persons for the purpose of sections 36 through 47 of this rule only.

(50) "Near the first service connection" means at one (1) of the twenty percent (20%) of all service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

(51) "Noncommunity water system" means a public water system ~~which that~~ has at least fifteen (15) service connections used by nonresidents or ~~which~~ regularly serves twenty-five (25) or more nonresident individuals daily for at least sixty (60) days per year.

(52) "Nontransient noncommunity water system" or "NTNCWS" means a public water system that is not a ~~community water system which~~ **CWS** that regularly serves the same twenty-five (25) or more persons at least six (6) months per year.

(53) "Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations for the purpose of sections 36 through 47 of this rule only.

(54) "Performance evaluation sample" means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the administrator. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

(55) "Pecuri" or "pCi" means the quantity of radioactive material producing two and twenty-two hundredths (2.22) nuclear transformations per minute.

(56) "Point of disinfectant application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water run-off.

(57) "Point-of-entry treatment device" or "POE" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in drinking water distributed throughout the house or building.

(58) "Point-of-use treatment device" or "POU" is a treatment device to a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap.

(59) "Primacy agency" is the department of environmental management where the department exercise primary enforcement responsibility as granted by EPA.

(60) "Public water system" means a public water supply for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. ~~"Public water system"~~ **The term** includes any:

(A) collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system; and ~~any~~

(B) collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.

A public water system is either a ~~community water system~~ **CWS** or a noncommunity water system, as defined in subdivisions (8) and (51).

(61) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A millirem (mrem) is one-thousandth ($1/1,000$) of a rem.

(62) "Repeat compliance period" means any subsequent compliance period after the initial compliance period.

(63) "Residual disinfectant concentration" ~~or~~ "C in CT calculations" means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.

(64) "Sanitary survey" means an on-site inspection of the water source, facilities, equipment, construction, and operation and maintenance of a public water system for the purpose of evaluating the adequacy of ~~such the~~ source, facilities, equipment, construction, and operation and maintenance for producing and distributing safe drinking water.

(65) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(66) "Service line sample" means a one (1) liter sample of water collected in accordance with section 37(b)(3) of this rule that has been standing at least six (6) hours in a service line.

(67) "Single family structure" means a building constructed as a single family residence that is currently being used as either a residence or a place of business for the purpose of sections 36 through 47 of this rule only.

(68) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than four-tenths (0.4) meter per hour or forty-five (45) to one hundred fifty (150) gallons per day per square foot) resulting in substantial particulate removal by physical and biological mechanisms.

(69) "Small water system" means a water system that serves three thousand three hundred (3,300) persons or fewer for the

purpose of sections 36 through 47 of this rule only.

(70) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(71) "Subpart H system" means a public water system using surface water or ground water under the direct influence of surface water as a source that is subject to the requirements of 327 IAC 8-2.6-1. **327 IAC 8-2.6.**

(72) "Supplier of water" means any person who owns ~~and/or~~ **or operates, or both,** a public water system.

(73) "Surface water" means all water occurring on the surface of the ground, including water in:

- (A) a stream;
- (B) natural and artificial lakes;
- (C) ponds;
- (D) swales;
- (E) marshes; and
- (F) diffused surface water.

(74) "SUVA" means specific ultraviolet absorption at two hundred fifty-four (254) nanometers, an indicator of the humic content of water. ~~It~~ **SUVA** is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of two hundred fifty-four (254) nanometers (UV₂₅₄) (in m⁻¹) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

(75) "System with a single service connection" means a public water system ~~which that~~ supplies drinking water to consumers via a single service line.

(76) "Too numerous to count" means that the total number of bacterial colonies exceeds two hundred (200) on a forty-seven (47) millimeter diameter membrane filter used for coliform detection.

(77) "Total organic carbon" or "TOC" means total organic carbon in milligrams per liter, measured using:

- (A) heat;
- (B) oxygen;
- (C) ultraviolet irradiation;
- (D) chemical oxidants; or
- (E) combinations of these oxidants;

that convert organic carbon to carbon dioxide, rounded to two (2) significant figures.

(78) "Total trihalomethanes" or "TTHM" means the sum of the concentration in milligrams per liter of the trihalomethane compounds:

- (A) trichloromethane (chloroform);
- (B) dibromochloromethane;
- (C) bromodichloromethane; and
- (D) tribromomethane (bromoform);

rounded to two (2) significant figures.

(79) "Transient noncommunity water system" or "TWS" means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year.

(80) "Trihalomethane" or "THM" means one (1) of the family of organic compounds, named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in methane

are each substituted by a halogen atom in the molecular structure.

(81) "Uncovered finished water storage facility" means a tank, reservoir, or other facility open to the atmosphere that is used to store water that will undergo no further treatment except residual disinfection.

(82) "U.S. EPA" or "EPA" means the United States Environmental Protection Agency.

(83) "Virus" means a virus of fecal origin ~~which that~~ is infectious to humans by waterborne transmission.

(84) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness epidemiologically associated with the ingestion of water from a public water system ~~which that~~ is deficient in treatment as determined by the commissioner.

¹Federal Register, Part II, 40 CFR 141, June 29, 1989, Volume 54, Number 124, pages 27532 through 27534. (*Water Pollution Control Board*; 327 IAC 8-2-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 705; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1003; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2151; filed Aug 24, 1994, 8:15 a.m.: 18 IR 19; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Oct 24, 1997, 4:30 p.m.: 21 IR 932; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1623; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1075; filed May 1, 2003, 12:00 p.m.: 26 IR 2808)

SECTION 2. 327 IAC 8-2-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-4 Inorganic chemicals; maximum contaminant levels

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 4. (a) The following MCLs for inorganic chemicals apply to all ~~community water systems, nontransient noncommunity water systems, CWSs, NTNCWSs, and transient noncommunity systems~~ **TWSs** except as provided in subsection (b):

<u>Contaminant</u>	<u>Level in Milligrams Per Liter</u>
Nitrate	10 (as nitrogen)
Nitrite	1 (as nitrogen)
Nitrate and nitrite	10 (as nitrogen)

(b) The commissioner may allow nitrate levels up to, but not to exceed, twenty (20) milligrams per liter in a noncommunity water system if the supplier of water meets all of the following conditions:

- (1) Such water will not be available to children under six (6) months of age.
- (2) There will be continuous posting of the fact that nitrate levels exceed ten (10) milligrams per liter and the potential health effects of exposure.
- (3) Local and state public health authorities shall be notified annually of nitrate levels that exceed ten (10) milligrams per liter.
- (4) No adverse health effects shall result.

(5) The commissioner may require additional notice to the public as provided by 327 IAC 8-2.1-14.

(c) The following MCL for fluoride applies to all ~~community water systems~~ **CWSs**:

<u>Contaminant</u>	<u>Level in Milligrams Per Liter</u>
Fluoride	4.0

(d) The following MCLs for inorganic chemicals apply to all ~~community water systems CWSs and nontransient noncommunity water systems~~ **NTNCWSs**:

<u>Contaminant</u>	<u>Level in Milligrams Per Liter Except Asbestos</u>
Antimony	0.006
Arsenic	0.05 0.010¹
Asbestos	7 (MFL) ⁺²
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (free)	0.2
Mercury	0.002
Selenium	0.05
Thallium	0.002

¹**Effective January 1, 2006. Until then, the arsenic MCL is 0.05 mg/l.**

⁺²MFL = million fibers per liter greater than ten (10) micrometers.

(e) For the inorganic chemicals listed in this section and nickel, the monitoring frequency is specified in section 4.1 of this rule and analytical methods are specified in section 4.2 of this rule.

(f) The commissioner hereby identifies the following as the ~~best available technology~~ **BAT**, treatment technique, or other means available for achieving compliance with the MCLs for inorganic contaminants identified in subsections (a), (c), and (d), except fluoride:

BAT for Inorganic Chemicals Listed in This Section

<u>Chemical Name</u>	<u>BATs</u>
Antimony	2,7
Arsenic⁴	1, 2, 5, 6, 7, 9, 12⁵
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6 ² ,7
Cyanide	5,7,10
Mercury	2 ¹ ,4,6 ¹ ,7 ¹
Nitrate	5,7,9
Nitrite	5,7
Selenium	1,2 ³ ,6,7,9

Thallium 1,5

¹BAT only if influent mercury concentrations less than ten (10) micrograms per liter.

²BAT for Chromium III only.

³BAT for Selenium IV only.

⁴**BATs for Arsenic V. Preoxidation may be required to convert Arsenic III to Arsenic V. Arsenic BATs apply beginning January 1, 2006.**

⁵**To obtain high removals, iron to arsenic ratio must be at least 20:1.**

Key to BATs in Table

1 = Activated alumina

2 = Coagulation/filtration (**not BAT for systems < 500 service connections**)

3 = Direct and diatomite filtration

4 = Granular activated carbon

5 = Ion exchange

6 = Lime softening (**not BAT for systems < 500 service connections**)

7 = Reverse osmosis

8 = Corrosion control

9 = Electrodialysis

10 = Chlorine

11 = Ultraviolet

12 = Oxidation/filtration

(g) The commissioner, pursuant to Section 1412 of the Act, hereby identifies in the following table the affordable technology, treatment technique, or other means available to systems serving ten thousand (10,000) persons or fewer for achieving compliance with the MCL for arsenic that will be applicable beginning January 1, 2006:

Small System Compliance Technologies (SSCTs)¹ for Arsenic²

Small system compliance technology	Affordable for listed small system categories ³
Activated alumina (centralized)	All size categories
Activated alumina (point-of-use) ⁴	All size categories
Coagulation/filtration ⁵	501-3,300, 3,301-10,000
Coagulation-assisted microfiltration	501-3,300, 3,301-10,000
Electrodialysis reversal ⁶	501-3,300, 3,301-10,000
Enhanced coagulation/filtration	All size categories
Enhanced lime softening (pH > 10.5)	All size categories
Ion exchange	All size categories
Lime softening ⁵	501-3,300, 3,301-10,000
Oxidation/filtration ⁷	All size categories
Reverse osmosis (centralized) ⁶	501-3,300, 3,301-10,000
Reverse osmosis (point-of-use) ⁴	All size categories

¹Section 1412(b)(4)(E)(ii) of the Act specifies that SSCTs must be affordable and technically feasible for small systems.

²SSCTs for Arsenic V. Preoxidation may be required to convert Arsenic III to Arsenic V.

³The Act (ibid.) specifies three (3) categories of small systems as follows:

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(A) Those serving twenty-five (25) or more, but fewer than five hundred one (501).

(B) Those serving more than five hundred (500), but fewer than three thousand three hundred one (3,301).

(C) Those serving more than three thousand three hundred (3,300), but fewer than ten thousand one (10,001).

⁴When POU or POE devices are used for compliance, programs to ensure proper long term operation, maintenance, and monitoring must be provided by the water system to ensure adequate performance.

⁵Unlikely to be installed solely for arsenic removal. May require pH adjustment to optimal range if high removals are needed.

⁶Technologies reject a large volume of water; may not be appropriate for areas where water quantity may be an issue.

⁷To obtain high removals, iron to arsenic ratio must be at least 20:1.

(Water Pollution Control Board; 327 IAC 8-2-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 706; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1006; filed Aug 24, 1994, 8:15 a.m.: 18 IR 22; filed Aug 25, 1997, 8:00 a.m.: 21 IR 34; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1079)

SECTION 3. 327 IAC 8-2-4.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-4.1 Collection of samples for inorganic chemical testing

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 4.1. (a) ~~Community water systems~~ CWSs shall conduct monitoring to determine compliance with the MCLs specified in section 4(a), 4(c), and 4(d) of this rule in accordance with this section. ~~Nontransient noncommunity water systems~~ NTNCWSs shall conduct monitoring to determine compliance with the MCLs specified in section 4(a) and 4(d) of this rule in accordance with this section. ~~Transient noncommunity water systems~~ TWSs shall conduct monitoring to determine compliance with the MCLs specified in section 4(a) of this rule in accordance with this section.

(b) When a contaminant listed in section 4 of this rule exceeds the MCL, the supplier of water shall report to the commissioner under section 13 of this rule and shall give notice to the public under 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Monitoring after public

notification shall be at a frequency designated by the commissioner and shall continue until the MCL has not been exceeded in two (2) successive samples or until a monitoring schedule as a condition to an enforcement action shall become effective.

(c) Monitoring shall be conducted as follows:

(1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system ~~which~~ **that** is representative of each well after treatment (hereafter called a sampling point) beginning in the compliance period starting January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems, including systems with a combination of surface and ground sources, shall take a minimum of one (1) sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point ~~which~~ **that** is representative of each source after treatment (hereafter called a sampling point) beginning in the compliance period beginning January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(3) If a system draws water from more than one (1) source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions, for example, when water is representative of all sources being used.

(4) The commissioner may reduce the total number of samples ~~which~~ **that** must be analyzed by allowing the use of compositing. Composite samples from a maximum of five (5) samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($\frac{1}{5}$) of the MCL. Compositing of samples must be completed in the laboratory as follows:

(A) When a composite sample is analyzed, if the concentration in the composite sample is greater than or equal to one-fifth ($\frac{1}{5}$) of the MCL of any inorganic chemical, then a follow-up sample must be analyzed within fourteen (14) days at each sampling point included in the composite. These samples must be analyzed for the contaminants ~~which~~ **that** exceeded one-fifth ($\frac{1}{5}$) of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are the following:

Contaminant	MCL (mg/l)	Methodology	Detection Limit (mg/l)
Antimony	0.006	Atomic absorption; furnace	0.003
		Atomic absorption; platform	0.0008 ⁵
		ICP-mass spectrometry	0.0004
		Hydride-atomic absorption	0.001
Arsenic	0.010 ⁶	Atomic absorption; furnace	0.001
		Atomic absorption; platform - stabilized temperature	0.0005 ⁷
		Atomic absorption; gaseous hydride	0.001
		ICP-mass spectrometry	0.0014 ⁸

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Asbestos	7 MFL ¹	Transmission electron microscopy	0.01 MFL
Barium	2	Atomic absorption; furnace	0.002
		Atomic absorption; direct aspiration	0.1
		Inductively coupled plasma	0.002
			(0.001)
Beryllium	0.004	Atomic absorption; furnace	0.0002
		Atomic absorption; platform	0.00002 ⁵
		Inductively coupled plasma ²	0.0003
		ICP-mass spectrometry	0.0003
Cadmium	0.005	Atomic absorption; furnace	0.0001
		Inductively coupled plasma	0.001
Chromium	0.1	Atomic absorption; furnace	0.001
		Inductively coupled plasma	0.007
			(0.001)
Cyanide	0.2	Distillation, spectrophotometric ³	0.02
		Distillation, automated spectrophotometric ³	0.005
		Distillation, selective electrode ³	0.05
		Distillation, amenable, spectrophotometric ⁴	0.02
Fluoride	4.0	Colorimetric SPADNS; with distillation	0.1
		Potentiometric ion selective electrode	0.1
		Automated alizarin fluoride blue; with distillation (complexone)	0.05
		Automated ion selective electrode	0.1
Mercury	0.002	Manual cold vapor technique	0.0002
		Automated cold vapor technique	0.0002
Nitrate	10 (as N)	Manual cadmium reduction	0.01
		Automated hydrazine reduction	0.01
		Automated cadmium reduction	0.05
		Ion selective electrode	1
		Ion chromatography	0.01
Nitrite	1 (as N)	Spectrophotometric	0.01
		Automated cadmium reduction	0.05
		Manual cadmium reduction	0.01
		Ion chromatography	0.004
Selenium	0.05	Atomic absorption; furnace	0.002
		Atomic absorption; gaseous hydride	0.002
Thallium	0.002	Atomic absorption; furnace	0.001
		Atomic absorption; platform	0.0007 ⁵
		ICP-mass spectrometry	0.0003

¹MFL = million fibers per liter greater than ten (10) micrometers.

²Using a 2× preconcentration step as noted in Method 200.7. Lower method detection limits may be achieved when using a 4× preconcentration.

³Screening method for total cyanides.

⁴Measures “free” cyanides.

⁵Lower method detection limits are reported using stabilized temperature graphite furnace atomic absorption.

⁶The value for arsenic is effective January 1, 2006. Until then, the MCL is 0.05 mg/l.

⁷The MDL reported for EPA Method 200.9 (Atomic Absorption; Platform - Stabilized Temperature) was determined using a 2× concentration step during sample digestion. The MDL determined for samples analyzed using direct analyses, that is, no sample digestion, will be higher. Using multiple depositions, EPA 200.9 is capable of obtaining MDL of 0.0001 mg/l.

⁸Using selective ion monitoring, EPA Method 200.8 (ICP-MS) is capable of obtaining a MDL of 0.0001 mg/l.

(B) If the population served by the system is greater than three thousand three hundred (3,300) persons, then compositing may only be permitted by the commissioner at sampling points within a single system. In systems serving less fewer than or equal to three thousand three hundred (3,300) persons, the commissioner may permit compositing

among different systems provided the five (5) sample limit is maintained.

(C) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use these instead of resampling. The duplicate must be analyzed and the results reported to the

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commissioner within fourteen (14) days after completing analysis of the composite sample, provided the holding time of the sample is not exceeded.

(5) The frequency of monitoring for:

- (A) asbestos shall be in accordance with subsection (d);
- (B) antimony, **arsenic**, barium, beryllium, cadmium, chromium, cyanide, fluoride, nickel, mercury, selenium, and thallium shall be in accordance with subsection (e);
- (C) nitrate shall be in accordance with subsection (f); **and**
- (D) nitrite shall be in accordance with subsection (g); **and**
- ~~(E) arsenic shall be in accordance with subsection (f).~~

(d) The frequency of monitoring conducted to determine compliance with the MCL for asbestos specified in section 4(d) of this rule shall be conducted as follows:

(1) Each ~~community CWS and nontransient noncommunity water system~~ **NTNCWS** is required to monitor for asbestos during the first three (3) year compliance period of each nine (9) year compliance cycle beginning in the compliance period starting January 1, 1993.

(2) If the system believes it is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, it may apply to the commissioner for a waiver of the monitoring requirement in subdivision (1). If the commissioner grants the waiver, the system is not required to monitor.

(3) The commissioner may grant a waiver based upon a consideration of the following factors:

- (A) Potential asbestos contamination of the water source.
- (B) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(4) A waiver remains in effect for the initial monitoring of the first three (3) year compliance period. Systems not receiving a waiver must monitor in accordance with ~~the provisions of~~ subdivision (1).

(5) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(6) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with ~~the provision of~~ subsection (c).

(7) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(8) A system ~~which that~~ exceeds the MCLs as determined in section 4 of this rule shall monitor quarterly beginning in the next quarter after the violation occurred.

(9) The commissioner may decrease the quarterly monitoring requirement to the frequency specified in subdivision (1) provided the commissioner has determined that the system is reliably and consistently below the MCL. In no case can the commissioner make this determination unless a ground water

system takes a minimum of two (2) quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four (4) quarterly samples.

(10) If monitoring data collected after January 1, 1990, are generally consistent with ~~the requirements of~~ this subsection, then the commissioner may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(e) The frequency of monitoring conducted for nickel and to determine compliance with the MCLs in section 4 of this rule for antimony, **arsenic**, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium shall be as follows:

(1) Ground water systems shall take one (1) sample at each sampling point during each compliance period. Surface water systems (or combined surface/ground) shall take one (1) sample annually at each sampling point.

(2) The system may apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision (1).

(3) A condition of the waiver shall require that a system take a minimum of one (1) sample while the waiver is effective. The term during which the waiver is effective shall not exceed one (1) compliance cycle, which is nine (9) years.

(4) The commissioner may grant a waiver provided surface water systems have monitored annually for at least three (3) years and ground water systems have conducted a minimum of three (3) rounds of monitoring. (At least one (1) sample shall have been taken since January 1, 1990.) Both surface and ground water systems shall demonstrate that all previous analytical results were less than the ~~maximum contaminant level~~ **MCL**. Systems that use a new water source are not eligible for a waiver until three (3) rounds of monitoring from the new source have been completed. The commissioner may grant a public water system a waiver for monitoring of cyanide, provided that the commissioner determines that the system is not vulnerable due to lack of any industrial source of cyanide.

(5) In determining the appropriate reduced monitoring frequency, the commissioner shall consider the following:

- (A) Reported concentrations from all previous monitoring.
- (B) The degree of variation in reported concentrations.
- (C) Other factors ~~which that~~ may affect contaminant concentrations such as **changes in**:

- (i) ~~changes in~~ ground water pumping rates;
- (ii) ~~changes in~~ the system's configuration;
- (iii) ~~changes in~~ the system's operating procedures; or
- (iv) ~~changes in~~ stream flows or characteristics.

(6) A decision by the commissioner to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the commissioner or upon an application by the public water system. The public water system shall specify the basis for its request. The commissioner shall review and, where appropriate, revise the determination of the appropriate monitoring frequency when

the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency becomes available.

(7) Systems ~~which that~~ exceed the MCLs as calculated in subsection (k) shall monitor quarterly beginning in the next quarter after the violation occurred.

(8) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivisions (1) and (2) provided it has determined that the system is reliably and consistently below the MCL. In no case can the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(9) All new systems or systems that use a new source of water that begin operation after January 1, 2004, must demonstrate compliance with the MCL within a period of time specified by the commissioner. The system must also comply with the initial sampling frequencies specified by the commissioner to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with this section.

(f) All public water systems ~~(community, nontransient noncommunity, (CWSs, NTNCWSs, and transient noncommunity systems) TWSs)~~ shall monitor to determine compliance with the MCL for nitrate in section 4(a) of this rule under the following monitoring schedules:

(1) ~~Community CWSs and nontransient noncommunity water systems~~ NTNCWSs served by ground water systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993.

(2) For ~~community CWSs and nontransient noncommunity water systems;~~ NTNCWSs, the repeat monitoring frequency for ground water systems shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty percent (50%) of the MCL. The commissioner may allow a ground water system to reduce the sampling frequency to annually after four (4) consecutive quarterly samples are reliably and consistently less than the MCL.

(3) For ~~community CWSs and nontransient noncommunity water systems;~~ NTNCWSs, the commissioner may allow a surface water system to reduce the sampling frequency to annually if all analytical results from four (4) consecutive quarters are less than fifty percent (50%) of the MCL. A surface water system shall return to quarterly monitoring if any one (1) sample is greater than or equal to fifty percent (50%) of the MCL.

(4) Each ~~transient noncommunity water system~~ TWS shall monitor annually beginning January 1, 1993.

(5) After the initial round of quarterly sampling is completed, each ~~community CWS and nontransient noncommunity system which~~ NTNCWS that is monitoring annually shall

take subsequent samples during the quarter ~~which that~~ previously resulted in the highest analytical result.

(g) All public water systems ~~(community, nontransient noncommunity, (CWSs, NTNCWSs, and transient noncommunity systems) TWSs)~~ shall monitor to determine compliance with the MCL for nitrite in section 4(a) of this rule under the following monitoring schedules:

(1) All public water systems shall take one (1) sample at each sampling point in the compliance period beginning January 1, 1993, and ending December 31, 1995.

(2) After the initial sample, systems where an analytical result for nitrite is less than fifty percent (50%) of the MCL shall monitor at the frequency specified by the commissioner.

(3) For ~~community, nontransient noncommunity, CWSs, NTNCWSs, and transient noncommunity water systems;~~ TWSs, the repeat monitoring frequency for any water system shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty percent (50%) of the MCL. The commissioner may allow a system to reduce the sampling frequency from quarterly to annually after determining the system is reliably and consistently less than the MCL.

(4) Systems ~~which that~~ are monitoring annually shall take each subsequent sample during the quarter ~~which that~~ previously resulted in the highest analytical result.

(h) Confirmation sampling shall be as follows:

(1) Where the results of sampling for:

- (A) antimony;
- (B) arsenic;
- (C) asbestos;
- (D) barium;
- (E) beryllium;
- (F) cadmium;
- (G) chromium;
- (H) cyanide;
- (I) fluoride;
- (J) mercury;
- (K) selenium; or
- (L) thallium;

indicate the MCL has been exceeded, the commissioner may require that one (1) additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two (2) weeks) at the same sampling point.

(2) Where nitrate or nitrite sampling results indicate the MCL has been exceeded, the system shall take a confirmation sample within twenty-four (24) hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the twenty-four (24) hour sampling requirement must immediately notify the consumers served by the public water system in accordance with 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Systems exercising this option must take and analyze a confirmation sample within two (2) weeks of notification of the analytical results

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of the first sample.

(3) If a commissioner-required confirmation sample is taken for any contaminant, the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with subsection (k). The commissioner has the discretion to delete results of obvious sampling errors.

(i) The commissioner may require:

(1) more frequent monitoring than specified in subsections (d) through (g); or ~~may require~~

(2) confirmation samples;
for positive and negative results.

(j) Systems may apply to the commissioner to conduct more frequent monitoring than the minimum monitoring frequencies specified in this section.

(k) Compliance with section 4 of this rule shall be determined based on the analytical results obtained at each sampling point in the following manner:

(1) For systems ~~which that~~ are conducting monitoring at a frequency greater than annual, compliance with the MCLs for:

- (A) antimony;
- (B) **arsenic**;
- (C) asbestos;
- (D) barium;
- (E) beryllium;
- (F) cadmium;
- (G) chromium;
- (H) cyanide;
- (I) fluoride;
- (J) mercury;
- (K) selenium; or
- (L) thallium;

is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one (1) sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero (0) for the purpose of determining the annual average. **If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.**

(2) For systems ~~which that~~ are monitoring annually, or less frequently, the system is out of compliance with the MCLs for:

- (A) antimony;
- (B) **arsenic**;
- (C) asbestos;
- (D) barium;
- (E) beryllium;
- (F) cadmium;
- (G) chromium;
- (H) cyanide;
- (I) fluoride;

(J) mercury;

(K) selenium; or

(L) thallium;

if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the commissioner, the determination of compliance will be based on the **annual** average of the ~~two (2)~~ **initial MCL exceedance and any commissioner-required confirmation samples. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.**

(3) Compliance with the MCLs for nitrate and nitrite is determined based on one (1) sample if the levels of these contaminants are below the MCLs. If the levels of nitrate or nitrite, or both, exceed the MCLs in the initial sample, a confirmation sample is required in accordance with subsection (h)(2), and compliance shall be determined based upon the average of the initial and confirmation samples.

(4) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commissioner may allow the system to give public notice to only the area served by that portion of the system ~~which that~~ is out of compliance.

(5) Beginning January 1, 2006, arsenic sampling results will be reported to the nearest one-thousandth (0.001) mg/l.

~~(4)~~ The frequency of monitoring conducted to determine compliance with the MCL for arsenic shall be as follows:

~~(1)~~ Analyses for all community water systems utilizing surface water sources shall be sampled annually.

~~(2)~~ Analyses for all community water systems utilizing only ground water sources shall be repeated at three (3) year intervals.

~~(3)~~ The commissioner has the authority to determine compliance or initiate enforcement action based on analytical results.

~~(4)~~ If the result of an analysis conducted as required in this section indicates that the results exceed the MCL as determined in section 4 of this rule, the supplier of water shall report to the state within seven (7) days and initiate three (3) additional analyses at the same sampling point within one (1) month.

~~(5)~~ When the average of four (4) analyses made pursuant to this section, rounded to the same number of significant figures as the MCL for the arsenic, exceeds the MCL, the supplier of water shall notify the commissioner and give notice to the public under section 16 of this rule. Monitoring after public notification shall be at a frequency set by the commissioner and shall continue until the MCL has not been exceeded in two (2) consecutive samples or until a monitoring schedule as a condition to an enforcement action shall become effective.

~~(m)~~ (l) Each public water system shall monitor at the time designated by the commissioner during each compliance period.

~~(n)~~ (m) Sample collection for:

- (1) antimony;
- (2) **arsenic**;
- (3) asbestos;
- (4) barium;
- (5) beryllium;
- (6) cadmium;
- (7) chromium;
- (8) cyanide;
- (9) fluoride;
- (10) mercury;
- (11) nickel;
- (12) nitrate;
- (13) nitrite;
- (14) selenium; and
- (15) thallium;

under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the following table:

Contaminant	Preservative ³	Container ¹	Time ²
Antimony	HNO ₃	P or G	6 months
Arsenic	HNO₃	P or G	6 months
Asbestos	4°C	P or G	48 hours ⁴
Barium	HNO ₃	P or G	6 months
Beryllium	HNO ₃	P or G	6 months
Cadmium	HNO ₃	P or G	6 months
Chromium	HNO ₃	P or G	6 months
Cyanide	4°C, NaOH	P or G	14 days
Fluoride	none	P or G	1 month
Mercury	HNO ₃	P or G	28 days
Nickel	HNO ₃	P or G	6 months
Nitrate	4°C	P or G	48 hours ⁵
Nitrate-nitrite ⁶	H ₂ SO ₄	P or G	28 days
Nitrite	4°C	P or G	48 hours
Selenium	HNO ₃	P or G	6 months
Thallium	HNO ₃	P or G	6 months

¹P = Plastic, hard or soft; G = glass.

²In all cases, samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers, or holding times that is specified in method.

³When indicated, samples must be acidified at the time of collection to pH < 2 with concentrated acid or adjusted with sodium hydroxide to pH > 12. When chilling is indicated the sample must be shipped and stored at four (4) degrees Celsius or less.

⁴Instructions for containers, preservation procedures, and holding times as specified in Method 100.2 must be adhered to for all compliance analyses including those conducted with Method 100.1.

⁵If the sample is chlorinated, the holding time for an unacidified sample kept at four (4) degrees Celsius is extended to fourteen (14) days.

⁶Nitrate-nitrite refers to a measurement of total nitrate.

(Water Pollution Control Board; 327 IAC 8-2-4.1; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1007; filed Aug 24, 1994, 8:15 a.m.: 18 IR 23; filed Aug 25, 1997, 8:00 a.m.: 21 IR 34; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1347; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3946; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1080)

SECTION 4. 327 IAC 8-2-4.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-4.2 Analytical methods for inorganic chemical testing

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 4.2. (a) Analyses conducted to determine compliance with section 4 of this rule shall be made in accordance with one (1) of the following methods* for each contaminant:

- (1) Antimony as follows:
 - (A) Atomic absorption¹; furnace, Method 3113B*.
 - (B) Atomic absorption; platform, Method 200.9*.
 - (C) ICP-mass spectrometry, Method 200.8*.
 - (D) Hydride-atomic absorption, Method D-3697-92*.
- (2) Arsenic* as follows:
 - (A) Atomic absorption; furnace, Method ~~D-2972-93C~~* **D 2972-97C*** or Method 3113B*.
 - (B) Hydride-atomic adsorption, Method ~~D-2972-93B~~* **D 2972-97B*** or Method 3114B*.
 - (C) Atomic absorption, platform¹, Method 200.9²*.
 - (D) Inductively coupled plasma technique^{1*}, Method 200.7^{2,3*} or Method 3120B^{3*}.
 - (E) ICP-mass spectrometry, Method 200.8^{2*}.
- (3) Asbestos, transmission electron microscopy, Method 100.1* or Method 100.2*.
- (4) Barium as follows:
 - (A) Atomic absorption; furnace, Method 3113B*.
 - (B) Atomic absorption; direct, Method 3111D*.
 - (C) Inductively coupled plasma, Method 200.7* or Method 3120B*.
 - (D) ICP-mass spectrometry, Method 200.8*.
- (5) Beryllium as follows:
 - (A) Atomic absorption; furnace, Method ~~D-3645-93B~~ **D 3645-97B** or Method 3113B.
 - (B) Atomic absorption; platform, Method 200.9*.
 - (C) Inductively coupled plasma, Method 200.7* or Method 3120B*.
 - (D) ICP-mass spectrometry, Method 200.8.
- (6) Cadmium as follows:
 - (A) Atomic absorption; furnace, Method 3113B*.
 - (B) Inductively coupled plasma¹, Method 200.7*.
 - (C) ICP-mass spectrometry, Method 200.8*.
 - (D) Atomic absorption; platform, Method 200.9*.
- (7) Chromium as follows:
 - (A) Atomic absorption; furnace, Method 3113B*.
 - (B) Inductively coupled plasma, Method 200.7* or Method 3120B*.

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- (C) ICP-mass spectrometry, Method 200.8*.
 (D) Atomic absorption; platform, Method 200.9*.
- (8) Cyanide as follows:
 (A) Manual distillation followed by:
 (i) Spectrophotometric; amenable, Method ~~D-2036-91B*~~ **D 2036-98B*** or Method 4500-CN-G*.
 (ii) Spectrophotometric; manual, Method ~~D-2036-91A*~~ **D 2036-98A***, Method 4500-CN-E*, or Method I-3300-85*.
 (iii) Spectrophotometric; semiautomated, Method 335.4*.
 (iv) Method 4500-CN-C*.
 (v) Method ~~D-2036-91A*~~ **D 2036-98A***.
 (B) Selective electrode, Method 4500-CN-F*.
 (C) UV/Distillation/Spectrophotometric; Method Kelada 01.
 (D) Distillation/Spectrophotometric; Method QuikChem 10-204-00-1-X.
- (9) Fluoride as follows:
 (A) Ion chromatography, Method 300.0*, Method ~~D-4327-91*~~ **D 4327-97***, or Method 4110B*.
 (B) Manual distillation; color. SPADNS, Method 4500F-B, D*.
 (C) Manual electrode, Method D1179-93B* or Method 4500F-C*.
 (D) Automated electrode, Method 380-75WE*.
 (E) Automated alizarin, Method 4500F-E* or Method 129-71W*.
- (10) Mercury as follows:
 (A) Manual cold vapor, Method 245.1, Method ~~D3223-91*~~ **D 3223-97***, or Method 3112B*.
 (B) Automated cold vapor, Method 245.2*.
 (C) ICP-mass spectrometry, Method 200.8*.
- (11) Nickel as follows:
 (A) Atomic absorption; furnace, Method 3113B*.
 (B) Atomic absorption; platform, Method 200.9.
 (C) Atomic absorption; direct, Method 3111B*.
 (D) Inductively coupled plasma, Method 200.7*, Method 3120B*.
 (E) ICP-mass spectrometry, Method 200.8*.
- (12) Nitrate as follows:
 (A) Manual cadmium reduction, Method D3867-90B* or Method 4500-NO₃-E*.
 (B) Automated cadmium reduction, Method 353.2*, Method D3867-90A*, or Method 4500-NO₃-F*.
 (C) Ion selective electrode, Method 4500-NO₃-D* or Method 601*.
 (D) Ion chromatography, Method 300.0*, Method ~~D-4327-91*~~ **D 4327-97***, Method 4110B*, or Method B-1011*.
- (13) Nitrite as follows:
 (A) Ion chromatography, Method 300.0*, Method ~~D-4327-91*~~ **D 4327-97***, Method 4110B*, or Method B-1011*.
 (B) Automated cadmium reduction, Method 353.2*, Method D3867-90A*, or Method 4500-NO₃-F*.
 (C) Manual cadmium reduction, Method D3867-90B* or Method 4500-NO₃-E*.
 (D) Spectrophotometric, Method 4500-NO₂-B*.

(14) Selenium as follows:

- (A) Hydride-atomic absorption, Method ~~D3859-93A*~~ **D 3859-98A*** or Method 3114B*.
 (B) ICP-mass spectrophotometry, Method 200.8*.
 (C) Atomic absorption; platform, Method 200.9*.
 (D) Atomic absorption; furnace, Method ~~D3859-93B*~~ **D 3859-98B*** or Method 3113B*.

(15) Thallium as follows:

- (A) Atomic absorption; platform¹, Method 200.9*.
 (B) ICP-mass spectrometry, Method 200.8*.

¹Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2× preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis, that is, no sample digestion, will be higher. For direct analysis of cadmium and arsenic by Method 200.7 and arsenic by Method 3120 B, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony and thallium by Method 200.9 and antimony by Method 3113 B unless multiple in-furnace depositions are made.

²If ultrasonic nebulization is used in the determination of arsenic by Method 200.7, 200.8, or 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For Methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of one hundred (100) µL of thirty percent (30%) hydrogen peroxide per one hundred (100) ml of solution. For direct analysis of arsenic with Method 200.8 using ultrasonic nebulization, samples and standards must contain one (1) mg/l of sodium hypochlorite.

³After January 1, 2006, analytical methods using the ICP-AES technology when analyzing for arsenic may not be used because the detection limits for these methods are eight-thousandths (0.008) mg/l or higher. This restriction means that the two (2) ICP-AES methods (Methods 200.7 and 3120 B) approved for use for the MCL of five-hundredths (0.05) mg/l may not be used for compliance determinations for the revised MCL of ten-thousandths (0.010) mg/l. However, prior to 2005, a system may have compliance samples analyzed with these less sensitive methods.

(b) Analysis under this section shall only be conducted by laboratories that have been certified by EPA or the commissioner. Laboratories may conduct sample analyses under provisional certification until January 1, 1996. To receive certification to conduct analyses for antimony, **arsenic**, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium, the laboratory must do the following:

- (1) Successfully analyze performance evaluation (PE) samples provided by EPA, the commissioner, or by a third party with approval of the EPA or the commissioner, at least once a year.
 (2) For each contaminant that has been included in the PE sample and for each method for which the laboratory desires

certification achieve quantitative results on the analyses that are within the following acceptance limits:

<u>Contaminant</u>	<u>Acceptance Limit</u>
Antimony	±30% at ≥0.006 mg/l
Arsenic ¹	± 2 standard deviations based on study statistics ± 30% at ≥ 0.003 mg/l
Asbestos	2 standard deviations based on study statistics
Barium	±15% at ≥0.15 mg/l
Beryllium	±15% at ≥0.001 mg/l
Cadmium	±20% at ≥0.002 mg/l
Chromium	±15% at ≥0.01 mg/l
Cyanide	±25% at ≥0.1 mg/l
Fluoride	±10% at ≥1 to 10 mg/l
Mercury	±30% at ≥0.0005 mg/l
Nickel	±15% at ≥0.01 mg/l
Nitrate	±10% at ≥0.4 mg/l
Nitrite	±15% at ≥0.4 mg/l
Selenium	±20% at ≥0.01 mg/l
Thallium	±30% at ≥0.002 mg/l

¹**Acceptance limit effective January 1, 2006. Until then, limit should be two (2) standard deviations based on study statistics.**

*Methods referenced in this section may be obtained as follows:

(1) Method 245.2, "Methods for Chemical Analysis of Water and Wastes", EPA-600/4-79-020, March 1983, available at NTIS, PB84-128677.

(2) Methods 200.8, 200.9, 200.7, and 245.1 may be found in "Methods for the Determination of Metals in Environmental Samples—Supplement I", EPA-600/94-111, May 1994, available from NTIS, PB95-125472, 800-553-6847.

(3) ~~Methods D-3697-92, D-2972-93C, D-2972-93B, D-3645-93B, D-2036-91B, D-2036-91A, D-4327-91, D-1179-93B, D-3223-91, D-3867-90A, D-3867-90B, D-3859-93A, and D-3859-93B, may be found in "Annual Book of ASTM Standards", 1994 and 1996, Vols. 11.01 and 11.02, American Society for Testing and Materials, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, 19103-19428. Any year containing the cited version of the method may be used.~~

(4) Methods D 2972-97C, D 2972-97B, D 3645-97B, D 2036-98A, D 2036-98B, D 4327-97, D 3223-97, D 3859-98A, and D 3859-98B may be found in the "Annual Book of ASTM Standards, 1999, Vols. 11.01 and 11.02, American Society for Testing and Materials, available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. Any year containing the cited version of the method may be used.

~~(4) (5) Methods 3113B, 3120B, 3114B, 3111D, 4500-CN⁺C, 4500-CN⁺G, 4500-CN⁺E, 4500-CN⁺F, 4110B, 4500F⁺B, D, 4500F⁺C, 4500F⁺E, 3112B, and 3111B, 4500-NO₃-F, 4500-~~

~~NO₃-D, 4500-NO₃-E, and 4500-NO₃-B may be found in "18th Edition of Standard Methods for the Examination of Water and Wastewater", 1992, or "19th Edition of Standard Methods for the Examination of Water and Wastewater", 1995, American Public Health Association, available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. Either edition may be used.~~

(6) Methods 3120B, 4500-CN⁺C, 4500-CN⁺G, 4500-CN⁺E, 4500-CN⁺F, 4110B, 4500F⁺B, D, 4500F⁺C, 4500F⁺E, 3112B, 4500-NO₃-F, 4500-NO₃-D, 4500-NO₃-E, and 4500-NO₃-B may be found in "18th Edition of Standard Methods for the Examination of Water and Wastewater", 1992, "19th Edition of Standard Methods for the Examination of Water and Wastewater", 1995, or "20th Edition of Standard Methods for the Examination of Water and Wastewater", 1998, American Public Health Association, available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. The cited methods published in any of the three (3) editions may be used.

~~(5) (7) Method I-3300-85 may be found in Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A-1, 3rd Edition, 1989, available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, Colorado 80225-0425.~~

~~(6) (8) Methods 335.4, 300.0, and 353.2 may be found in "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA-600/R-93-100, August 1993, available from NTIS, PB94-120821.~~

~~(7) (9) Method 601 may be found in Technical Bulletin 601 "Standard Method of Test for Nitrate in Drinking Water", July 1994, PN 221890-001, Analytical Technology, Inc., available from ATI Orion, 529 Main Street, Boston, Massachusetts 02129.~~

~~(8) (10) Method B-1011 may be found in "Waters Test Method for Determination of Nitrate/Nitrite in Water Using Single Column Ion Chromatography", August 1987, available from Waters Corporation, 34 Maple Street, Milford, Massachusetts 01757.~~

~~(9) (11) Method 100.1 may be found in "Analytical Methods for Determination of Asbestos Fibers in Water", EPA-600/4-83-043, EPA, September 1983, available from NTIS, PB83-260471.~~

~~(10) (12) Method 100.2 may be found in "Determination of Asbestos Structure Over 10-µm in Length in Drinking Water", EPA-600/R-94-134, June 1994, available from NTIS, PB94-201902.~~

~~(11) (13) Method 129-71W may be found in "Fluoride in Water and Wastewater", December 1972, Technicon Industrial Systems, available from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, Illinois 60089.~~

~~(12) (14) Method 380-75WE may be found in "Fluoride in Water and Wastewater", February 1976, Technicon Industrial Systems, available from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, Illinois 60089.~~

(15) Method Kelada 01 may be found in “Kelada Automated Test Methods for Total Cyanide, Acid Dissolvable Cyanide, and Thiocyanate”, Rev. 1.2, August 2001, EPA 821-B-01-099, available from the National Technical Information Service (NTIS), PB 2001-108275, 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.

(16) Method QuikChem 10-204-00-1-X may be found in “Digestion and distillation of total cyanide in drinking and wastewaters using MICRO DIST and determination of cyanide by flow injection analysis”, Rev. 2.1, November 30, 2000, available from Lachat Industries, 6645 West Mill Road, Milwaukee, Wisconsin 53218, 414-358-4200.

These methods are also available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2-4.2; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1008; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Aug 24, 1994, 8:15 a.m.: 18 IR 29; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 40; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3951*)

SECTION 5. 327 IAC 8-2-5.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.1 Collection of samples for organic chemical testing other than volatile organic compounds and total trihalomethanes

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5.1. To determine compliance with section 5(a) of this rule, collection of samples for organic chemical testing, other than volatile organic compounds and ~~total trihalomethanes~~, **TTHM**, shall be made as follows:

- (1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system ~~which that~~ is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.
- (2) Surface water systems, including those systems with a combination of surface and ground sources, shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.
- (3) If the system draws water from more than one (1) source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions, such as when water representative of all sources is being used.
- (4) The monitoring frequency is as follows:

(A) Each ~~community CWS and nontransient noncommunity water system~~ **NTNCWS** shall take four (4) consecutive quarterly samples for each contaminant listed in section 5(a) of this rule during each compliance period beginning with the initial compliance period.

(B) Systems serving more than three thousand three hundred (3,300) persons ~~which that~~ do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of two (2) quarterly samples in one (1) year during each repeat compliance period.

(C) Systems serving less than or equal to three thousand three hundred (3,300) persons ~~which that~~ do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one (1) sample during each repeat compliance period.

(5) Each ~~community CWS and nontransient noncommunity water system~~ **NTNCWS** may apply to the commissioner for a waiver from the requirement of subdivision (4). A system must reapply for a waiver for each compliance period.

(6) The commissioner may grant a waiver after evaluating the knowledge of previous use, including transport, storage, or disposal of the contaminant within the watershed or zone of influence of the system. If a determination by the commissioner reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(A) Previous analytical results.

(B) The proximity of the system to a potential point or nonpoint source of contamination. (Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Nonpoint sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses).

(C) The environmental persistence and transport of the pesticide or polychlorinated biphenyls (PCBs).

(D) How well the water source is protected against contamination due to such factors as:

- (i) depth of the well;
- (ii) the type of soil; and
- (iii) the integrity of the well casing.

(E) Elevated nitrate levels at the water supply source.

(F) Use of PCBs in equipment used in the production, storage, or distribution of water, including, but not limited to, PCBs used in pumps or transformers.

(7) If an organic contaminant listed in section 5(a) of this rule is detected as defined by subdivision (16), in any sample, then the monitoring requirements are as follows:

(A) Each system must monitor quarterly at each sampling point ~~which that~~ resulted in a detection.

(B) The commissioner may decrease the quarterly monitoring requirement specified in clause (A) provided it has determined that the system is reliably and consistently below the MCL. In no case shall the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(C) After the commissioner determines the system is reliably and consistently below the MCL, the commissioner may allow the system to monitor annually. Systems ~~which~~ **that** monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(D) Systems ~~which that~~ have three (3) consecutive annual samples with no detection of contaminant may apply to the commissioner for a waiver as specified in subdivision (6).

(E) If monitoring results in detection of one (1) or more of certain related contaminants:

- (i) aldicarb;
- (ii) aldicarb sulfoxide;
- (iii) aldicarb sulfone;
- (iv) heptachlor; and
- (v) heptachlor epoxide;

then subsequent monitoring shall include analyses for all related contaminants.

(8) Systems ~~which that~~ violate the requirements of section 5(a) of this rule as determined by subdivision (11) must monitor quarterly. After a minimum of four (4) quarterly samples shows the system is in compliance and the commissioner determines the system is reliably and consistently below the MCL, as specified in subdivision (11), the system shall monitor at the frequency specified in subdivision (7)(C).

(9) The commissioner may require a confirmation sample for positive or negative results. If a confirmation sample is required by the commissioner, the result must be averaged with the first sampling result and the average used for the compliance determination as specified in subdivision (11). The commissioner has the discretion to delete results of obvious sampling errors from this calculation.

(10) The commissioner may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($1/5$) of the MCL. Compositing of samples must be done in the laboratory and analyzed within fourteen (14) days of sample collection in accordance with the following:

(A) When a composite sample is analyzed, if the concentration in the composite sample detects one (1) or more contaminants listed in section 5(a) of this rule, then a follow-up sample must be analyzed within fourteen (14) days from each sampling point included in the composite and analyzed for that contaminant.

(B) If duplicates of the original sample taken from each sampling point used in the composite samples are available, the system may use these instead of resampling. The

duplicates must be analyzed and the results reported to the commissioner within fourteen (14) days after completion of the composite analysis or before the holding time for the initial sample is exceeded, whichever is sooner.

(C) If the population served by the system is greater than three thousand three hundred (3,300) persons, then compositing may only be permitted by the commissioner at sampling points within a single system. In systems serving less than or equal to three thousand three hundred (3,300) persons, the commissioner may permit compositing among different systems provided the five (5) sample limit is maintained.

(11) Compliance with section 5(a) of this rule shall be determined **such that, if one (1) sampling point is in violation of an MCL, the system is in violation of the MCL** and based on the analytical results obtained at each sampling point in the following manner:

(A) For systems ~~which that~~ are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. ~~If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero (0) for purposes of determining the annual average.~~

(B) ~~If Systems~~ monitoring is conducted annually, or less frequently, **whose sample results exceed the regulatory detection level as specified in subdivision (16) must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one (1) year of quarterly sampling.**

(C) **If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance if the level of a contaminant at any sampling point is greater than with the MCL immediately.**

(D) ~~If a confirmation sample is system fails to collect the required by the commissioner, the determination number of samples, compliance will be based on the average total number of two (2) samples collected.~~

(E) **If a sample result is less than the detection limit, zero (0) will be used to calculate the annual average.**

(12) If monitoring data collected after January 1, 1990, are generally consistent with ~~the requirements of~~ this section and section 5.2 of this rule, then the commissioner may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period.

(13) The commissioner may increase the required monitoring frequency, where necessary, to detect variations within the system such as fluctuations in concentration due to seasonal use and changes in water source.

(14) The commissioner has the authority to determine compliance or initiate enforcement action based upon analyti-

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cal results and other information compiled by the commissioner's sanctioned representatives or agencies, or both.

(15) Each public water system shall monitor at the time designated by the commissioner within each compliance period.

(16) Method detection levels for contaminants listed in section 5(a) of this rule are as follows:

<u>Contaminant</u>	<u>Detection Limit (mg/l)</u>
Alachlor	0.0002
Atrazine	0.0001
Benzo[a]pyrene	0.00002
Carbofuran	0.0009
Chlordane	0.0002
Dalapon	0.001
1,2-dibromo-3-chloropropane (DBCP)	0.00002
Di(2-ethylhexyl)adipate	0.0006
Di(2-ethylhexyl)phthalate	0.0006
Dinoseb	0.0002
Diquat	0.0004
2,4-D	0.0001
Endothall	0.009
Endrin	0.00001
Ethylene dibromide (EDB)	0.00001
Glyphosate	0.006
Heptachlor	0.00004
Heptachlor epoxide	0.00002
Hexachlorobenzene	0.0001
Hexachlorocyclopentadiene	0.0001
Lindane	0.00002
Methoxychlor	0.0001
Oxamyl	0.002
Picloram	0.0001
Polychlorinated biphenyls (PCBs) (as decachlorobiphenyl)	0.0001
Pentachlorophenol	0.00004
Simazine	0.00007
Toxaphene	0.001
2,3,7,8-TCDD (dioxin)	0.000000005
2,4,5-TP (silvex)	0.0002

(17) All new systems or systems that use a new source of water that begin operation after January 1, 2004, must demonstrate compliance with the MCL within a period of time specified by the commissioner. The system must also comply with the initial sampling frequencies specified by the commissioner to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

(Water Pollution Control Board; 327 IAC 8-2-5.1; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1010; filed Aug 24, 1994, 8:15 a.m.: 18 IR 33; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 44; filed Apr 21, 1999, 3:22 p.m.: 22 IR 2862; errata filed Apr 28, 1999, 6:36 p.m.: 22 IR

2883; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3953; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1084)

SECTION 6. 327 IAC 8-2-5.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.2 Analytical methods for organic chemical testing other than volatile organic compounds and total trihalomethanes

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5.2. (a) Analysis for the contaminants listed in section 5(a) of this rule shall be conducted using the following EPA methods or their **equivalent equivalents** as approved by EPA established as follows:

- (1) Dioxin, as described in Method 1613*.
- (2) 2,4-D³ (as acid, salts, and esters), as described in Method 515.2, Rev 1.1*, Method 555, **Rev 1.0***, Method 515.1, **Rev 4.0***, Method 515.3*, or Method D5317-93*.
- (3) 2,4,5-TP³ (silvex), as described in Method 515.2, Rev 1.1*, Method 555, **Rev 1.0***, Method 515.1, **Rev 4.0***, Method 515.3*, or Method D5317-93*.
- (4) Alachlor¹, as described in Method 505, Rev 2.1*, Method 507, Rev 2.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (5) Atrazine¹, as described in Method 505, Rev 2.1*, Method 507, Rev 2.1*, Method ~~525.1~~, **525.2**, **Rev 2.0***, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (6) Benzo(a)pyrene, as described in Method 525.2, Rev 2.0*, Method 550*, or Method 550.1*.
- (7) Carbofuran, as described in Method 531.1, Rev 3.1*, or Method 6610*.
- (8) Chlordane, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, or Method 508.1, Rev 2.0*.
- (9) Dalapon, as described in Method 552.1, Rev 1.0*, Method 515.1, **Rev 4.0***, Method 552.2, Rev 1.0*, or Method 515.3, **Rev 1.0***.
- (10) Di(2-ethylhexyl)adipate, as described in Method 506, Rev 1.1* or Method 525.2, Rev 2.0*.
- (11) Di(2-ethylhexyl)phthalate, as described in Method 506, Rev 1.1* or Method 525.2, Rev 2.0*.
- (12) Dibromochloropropane (DBCP), as described in Method 504.1, Rev 1.1* or Method 551.1, Rev 1.0*.
- (13) Dinoseb³, as described in Method 515.2, Rev 1.1*, Method 555, **Rev 1.0***, Method 515.1, **Rev 4.0***, or Method 515.3, **Rev 1.0***.
- (14) Diquat, as described in Method 549.2, **Rev 1.0***.
- (15) Endothall, as described in Method 548.1, **Rev 1.0***.
- (16) Endrin, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (17) Ethylene dibromide (EDB), as described in Method 504.1, Rev 1.1* or Method 551.1, Rev 1.0*.

- (18) Glyphosate, as described in Method 547* or Method 6651*.
- (19) Heptachlor, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (20) Heptachlor epoxide, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (21) Hexachlorobenzene, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (22) Hexachlorocyclopentadiene, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (23) Lindane, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method ~~525.1*~~, **525.2, Rev 2.08**, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (24) Methoxychlor, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method ~~525.1*~~, **525.2, Rev 2.0***, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (25) Oxymyl, as described in Method 531.1, Rev 3.1* or Method 6610*.
- (26) PCBs¹:
- (A) as decachlorobiphenyl, as described in Method 508A, **Rev 1.0***, or
- (B) as arochlors, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, or Method 508.1, Rev 2.0*.
- (27) Pentachlorophenol, as described in Method 515.2, Rev 1.1*, Method 525.2, Rev 2.0*, Method 555, **Rev 1.0***, Method 515.1, **Rev 4.0***, Method 515.3, **Rev 1.0***, or Method D5317-93*.
- (28) Picloram³, as described in Method 515.2, Rev 1.1*, Method 555, **Rev 1.0***, Method 515.1, **Rev 4.0***, Method 515.3, **Rev 1.0***, or Method D5317-93*.
- (29) Simazine¹, as described in Method 505, Rev 2.1*, Method 507, Rev 2.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
- (30) Toxaphene, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, or Method 508.1, Rev 2.0*.

¹Substitution of the detector specified in Method 505, Rev 2.1, Method 507, Rev 2.1, Method 508, Rev 3.1, or Method 508.1, Rev 3.0 for the purpose of achieving lower detection limits is allowed as follows. Either an electron capture or nitrogen phosphorus detector may be used provided all regulatory requirements and quality control criteria are met.

²PCBs are qualitatively identified as Arochlors and measured for compliance purposes as decachlorobiphenyl. Users of Method 505, Rev 2.1 may have more difficulty in achieving the required detection limits than users of Method 508.1, Rev 2.0, Method 525.2, Rev 2.0 or Method 508, Rev 3.1.

³Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in Method 515.1, Method 515.2, Rev 1.1, Method 515.3, Method 555, and Method D5317-93.

(b) Analysis for PCBs shall be conducted as follows using the methods in subsection (a):

(1) Each system ~~which that~~ monitors for PCBs shall analyze each sample using either Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 508.1, Rev 2.0*, or Method 525.2, Rev 2.0*. Users of Method 505, Rev 2.1 may have more difficulty in achieving the required Arochlor detection limits than users of Method 508.1, Rev 2.0, Method 525.2, Rev 2.0 or Method 508, Rev 3.1.

(2) If PCBs (as one (1) of seven (7) arochlors) are detected, as designated as follows, in any sample analyzed using Method 505, Rev 2.1* or Method 508, Rev 3.1*, the system shall reanalyze the sample using Method 508A* to quantitate PCBs (as decachlorobiphenyl):

<u>Arochlor</u>	<u>Detection Limit (mg/l)</u>
1016	0.00008
1221	0.02
1232	0.0005
1242	0.0003
1248	0.0001
1254	0.0001
1260	0.0002

(3) Compliance with the PCB ~~maximum contaminant level~~ **MCL** shall be determined based upon the quantitative results of analyses using Method 508A*.

(c) Analysis under this section shall only be conducted by laboratories that have received certification by EPA or the commissioner and have met the following conditions:

(1) Successfully analyze performance evaluation (PE) samples provided by the EPA, the commissioner, or by a third party with the approval of the EPA or the commissioner, at least once per year by each method for which the laboratory desires certification.

(2) For each contaminant that has been included in the PE sample achieve quantitative results on the analyses that are within the following acceptance limits:

<u>Contaminant</u>	<u>Acceptance Limits (Percent)</u>
DBCP	±40
EDB	±40
Alachlor	±45
Atrazine	±45
Benzo(a)pyrene	2 standard deviations
Carbofuran	±45
Chlordane	±45
Dalapon	2 standard deviations
Di(2-ethylhexyl)adipate	2 standard deviations
Di(2-ethylhexyl)phthalate	2 standard deviations
Dinoseb	2 standard deviations
Diquat	2 standard deviations
Endothall	2 standard deviations
Endrin	±30

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Glyphosate	2 standard deviations
Heptachlor	±45
Heptachlor epoxide	±45
Hexachlorobenzene	2 standard deviations
Hexachlorocyclopentadiene	2 standard deviations
Lindane	±45
Methoxychlor	±45
Oxamyl	2 standard deviations
PCBs (as decachlorobiphenyl)	0-200
Picloram	2 standard deviations
Simazine	2 standard deviations
Toxaphene	±45
Pentachlorophenol	±50
2,3,7,8-TCDD (dioxin)	2 standard deviations
2,4-D	±50
2,4,5-TP (silvex)	±50

*The methods referenced in this section may be obtained as follows:

- (1) Method 508A, **Rev 1.0** and Method 515.1, **Rev 4.0** may be found in "Methods for the Determination of Organic Compounds in Drinking Water", EPA-600/4-88-039, December 1988, revised July 1991, available from NTIS, PB91-231480, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.
- (2) Methods 547, 550, and 550.1 may be found in "Methods for the Determination of Organic Compounds in Drinking Water—Supplement I", EPA-600-4-90-020, July 1990, available from NTIS, PB91-146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.
- (3) Methods 548.1, ~~549.1~~, **Rev 1.0**, 552.1, **Rev 1.0**, and 555, **Rev 1.0** may be found in "Methods for the Determination of Organic Compounds in Drinking Water—Supplement II", EPA-600/R-92-129, August 1992, available from NTIS, PB92-207703, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.
- (4) Methods 504.1, Rev 1.1, 505, Rev 2.1, 506, Rev 1.1, 507, Rev 2.1, 508, Rev 3.1, 508.1, Rev 2.0, 515.2, Rev 1.1, 525.2, Rev 2.0, 531.1, Rev 3.1, 551.1, Rev 1.0, and 552.2, Rev 1.0 may be found in "Methods for the Determination of Organic Compounds in Drinking Water - Supplement III", EPA-600/R-95-131, August 1995, available from NTIS, PB95-261616, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.
- (5) Method 1613 may be found in "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS", EPA 821-B-94-005, October 1994, available from NTIS, PB95-104774, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.
- (6) Method 6651 may be found in "18th Edition of Standard Methods for the Examination of Water and Wastewater", and "19th Edition of Standard Methods for the Examination of

Water and Wastewater", and **"20th Edition of Standard Methods for the Examination of Water and Wastewater"**, 1992, and 1995, and **1998**, American Public Health Association, available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. ~~Either edition~~ **Any of these three (3) editions** may be used.

(7) Method 6610 may be found in "Supplement to the 18th Edition of Standard Methods for Water and Wastewater", or "19th Edition of Standard Methods for the Examination of Water and Wastewater", or **"20th Edition of Standard Methods for the Examination of Water and Wastewater"**, 1994, and 1995, and **1998**, American Public Health Association, available from the National Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. ~~Either publication~~ **Any of these three (3) publications** may be used.

(8) Other required analytical test procedures germane to the conduct of these analyses are contained in "Technical Notes of Drinking Water Methods", EPA/600/R-94-173, October 1994, available from NTIS, PB95-104766, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(9) EPA Methods 515.3, **Rev 1.0** and 549.2, ~~are available from U.S. EPA National Exposure Research Laboratory (NERL), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268; the phone number is (513) 569-7586~~ **Rev 1.0 may be found in "Methods for the Determination of Organic and Inorganic Compounds in Drinking Water, Volume 1", 2000, EPA 815-R-00-014, available from U.S. EPA/NSCEP, Post Office Box 42419, Cincinnati, Ohio 42419, (800) 490-9198.**

(10) ASTM Method D5317-93 may be found in the "Annual Book of ASTM Standards", ~~1996~~, **1999**, Vol. 11.02, available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. Method D5317-93 may also be found in any other edition of the "Annual Book of ASTM Standards" published from 1993 until the effective date of this rule.

(11) Method 531.2, "Measurement of N-methylcarbamoyloximes and N-methylcarbamates in Water by Direct Aqueous Inactivation HPLC with Postcolumn Derivatization", Rev. 1.0, September 2001, EPA 815/B/01/002 can be assessed and downloaded directly on-line at www.epa.gov/safewater/methods/sorcal.html.

These methods are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2-5.2; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1011; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Aug 24, 1994, 8:15 a.m.: 18 IR 35; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 46; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1347; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3956*)

SECTION 7. 327 IAC 8-2-5.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.5 Collection of samples for volatile organic compound testing other than total trihalomethanes; community and nontransient noncommunity water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5.5. (a) ~~Community water systems CWSs and nontransient noncommunity water systems NTNCWSs~~ shall collect samples for volatile organic compound testing in order to determine compliance with section 5.4 of this rule, beginning with the initial compliance period, as follows:

- (1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system ~~which that~~ is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point, unless conditions make another sampling point more representative of each source or treatment plant, or within the distribution system.
- (2) Surface water systems (or combined surface/ground) shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point, unless conditions make another sampling point more representative of each source or treatment plant, or within the distribution system.
- (3) If the system draws water from more than one (1) source and sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions such as when water representative of all sources is being used.
- (4) Each ~~community CWS and nontransient noncommunity water system NTNCWS~~ shall take four (4) consecutive quarterly samples for each contaminant listed in section 5.4 of this rule, except vinyl chloride, during each compliance period, beginning in the initial compliance period.
- (5) If the initial monitoring for contaminants listed in section 5.4 of this rule, as allowed by ~~subsection (b); subdivision (16)~~, has been completed by December 31, 1992, and the system did not detect any contaminant listed in section 5.4 of this rule, then each ground and surface water system shall take one (1) sample annually beginning with the initial compliance period.
- (6) After a minimum of three (3) years of annual sampling, the commissioner may allow ground water systems with no previous detection of any contaminant listed in section 5.4 of this rule to take one (1) sample during each compliance period.
- (7) Each community and nontransient noncommunity ground water system ~~which that~~ does not detect a contaminant listed in section 5.4 of this rule may apply to the commissioner for a waiver from the requirements of subdivisions (5) and (6) after completing the initial monitoring. As used in this section, "detection" means greater than or equal to five ten-thou-

sandths (0.0005) milligram per liter. A waiver shall be effective for no more than six (6) years (two (2) compliance periods). The commissioner may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

(8) The commissioner may grant a waiver after evaluating the following factors:

- (A) Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the commissioner reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted.
- (B) If previous use of the contaminant is unknown or if the contaminant has been used previously, then the following factors shall be used to determine whether a waiver is granted:
 - (i) Previous analytical results.
 - (ii) The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.
 - (iii) The environmental persistence and transport of the contaminants.
 - (iv) The number of persons served by the public water system, and the proximity of a smaller system to a larger system.
 - (v) How well the water source is protected against contamination, such as whether it is a surface or ground water system. Ground water systems must consider factors such as the depth of the well, the type of soil, and wellhead protection. Surface water systems must consider watershed protection.

(9) As a condition of the waiver, a ground water system must take one (1) sample at each sampling point during the time the waiver is effective, for example, one (1) sample during two (2) compliance periods or six (6) years, and update its vulnerability assessment considering the factors listed in subdivision (8). Based on this vulnerability assessment, the commissioner must reconfirm that the system is nonvulnerable. If the commissioner does not make this reconfirmation within three (3) years of the initial determination, then the waiver is invalidated and the system is required to sample annually as specified in subdivision (5).

(10) Each community and nontransient noncommunity surface water system ~~which that~~ does not detect a contaminant listed in section 5.4 of this rule may apply to the commissioner for a waiver from ~~the requirements of~~ subdivision (5) after completing the initial monitoring. Composite samples from a maximum of five (5) sampling points are allowed provided that the detection limit of the method used for analysis is less than one-fifth ($\frac{1}{5}$) of the MCL. Systems meeting this criterion must be determined by the commissioner to be nonvulnerable

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based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the commissioner (if any).

(11) If a contaminant listed in section 5.4 of this rule, except vinyl chloride, is detected at a level exceeding five ten-thousandths (0.0005) milligram per liter in any sample, then the monitoring requirements will be as follows:

(A) The system must monitor quarterly at each sampling point ~~which that~~ resulted in a detection.

(B) The commissioner may decrease the quarterly monitoring requirement specified in clause (A) provided it has determined that the system is reliably and consistently below the MCL. In no case shall the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(C) If the commissioner determines that the system is reliably and consistently below the MCL, the commissioner may allow the system to monitor annually. Systems ~~which that~~ monitor annually must monitor during the quarter or quarters ~~which that~~ previously yielded the highest analytical result.

(D) Systems ~~which that~~ have three (3) consecutive annual samples with no detection of a contaminant may apply to the commissioner for a waiver as specified in subdivision (7).

(E) Ground systems ~~which that~~ have detected one (1) or more two-carbon organic compounds:

- (i) trichloroethylene;
- (ii) tetrachloroethylene;
- (iii) 1,2-dichloroethane;
- (iv) 1,1,1-trichloroethane;
- (v) cis-1,2-dichloroethylene;
- (vi) trans-1,2-dichloroethylene; or
- (vii) 1,1-dichloroethylene;

shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one (1) or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the commissioner may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one (1) sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the commissioner.

(12) Systems ~~which that~~ violate the requirements of section 5.4 of this rule, as determined by subdivision (15), must monitor quarterly. After a minimum of four (4) consecutive quarterly samples ~~which that~~ show the system is in compliance as specified in subdivision (15) if the commissioner determines that the system is reliably and consistently below the MCL, the system may monitor at the frequency and times specified in subdivision (11)(C).

(13) The commissioner may require a confirmation sample for positive or negative results. If a confirmation sample is required by the commissioner, the result must be averaged

with the first sampling result and the average is used for the compliance determination as specified by subdivision (15). The commissioner has the discretion to delete results of obvious sampling errors from this calculation.

(14) The commissioner may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($\frac{1}{5}$) of the MCL. Compositing of samples must be done in the laboratory and analyzed within fourteen (14) days of sample collection as follows:

(A) If the concentration in the composite sample is greater than or equal to five ten-thousandths (0.0005) milligram per liter for any contaminant listed in section 5.4 of this rule, then a follow-up sample must be analyzed within fourteen (14) days from each sampling point included in the composite, and be analyzed for that contaminant.

(B) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use the duplicates instead of resampling. The duplicates must be analyzed and the results reported to the commissioner within fourteen (14) days after completing analysis of the composite sample, provided the holding time of the sample is not exceeded.

(C) Compositing may only be permitted by the commissioner at sampling points within a single system if the population served by the system is greater than three thousand three hundred (3,300) persons. In systems serving less than or equal to three thousand three hundred (3,300) persons, the commissioner may permit compositing among different systems provided the five (5) sample limit is maintained.

(D) Compositing of samples prior to gas chromatography (GC) analysis shall be as follows:

(i) Add five (5) milliliters or equal larger amounts of each sample (up to five (5) samples are allowed) to a twenty-five (25) milliliter glass syringe. Special precautions must be made to maintain zero (0) headspace in the syringe.

(ii) The samples must be cooled at four (4) degrees Celsius during this step to minimize volatilization losses.

(iii) Mix well and draw out a five (5) milliliter aliquot for analysis.

(iv) Follow sample introduction, purging, and desorption steps described in the method.

(v) If less than five (5) samples are used for compositing, a proportionately smaller syringe may be used.

(E) Compositing of samples prior to gas chromatography/mass spectrometry (GS/MS) analysis shall be as follows:

(i) Inject five (5) milliliters or larger amounts of each aqueous solution (up to five (5) samples are allowed) into a twenty-five (25) milliliter purging device using the sample introduction technique described in the method.

(ii) The total volume of the sample in the purging device must be twenty-five (25) milliliters.

(iii) Purge and desorb as described in the method.

(15) Compliance with section 5.4 of this rule shall be determined **such that, if one (1) sampling point is in violation of an MCL, the system is in violation of the MCL** and based on the analytical results obtained at each sampling point using the following criteria:

(A) For systems ~~which that~~ are conducting monitoring at a frequency greater than annually, compliance is determined by a running annual average of all samples taken at each sampling point. ~~If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately.~~

(B) If ~~Systems~~ monitoring is ~~conducted~~ annually, or less frequently, **whose sample results exceed the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one (1) year of quarterly sampling.**

(C) **If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance if the level of a contaminant at any sampling point is greater than with the MCL immediately.**

(D) ~~If a confirmation sample is system fails to collect the required by the commissioner, the determination number of samples, compliance will be based on the average total number of two (2) samples collected.~~

(E) **If a sample result is less than the detection limit, zero (0) will be used to calculate the annual average.**

~~(F) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commissioner may allow the system to give public notice to only that area served by that portion of the system which that is out of compliance.~~

~~(16) The commissioner may allow the use of monitoring data collected after January 1, 1988, for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements of this section, the commissioner may use these data (a single sample rather than four (4) quarterly samples) to satisfy the initial monitoring requirement of subsection (a)(4) subdivision (4). Systems which that use grandfathered samples and do not detect any contaminant listed in section 5.4 of this rule, except vinyl chloride, shall begin monitoring annually in accordance with subsection (a)(5), subdivision (5), beginning with the initial compliance period.~~

~~(17) The commissioner may increase required monitoring where necessary to detect variations within the system.~~

~~(18) To receive certification to conduct analyses for the contaminants in section 5.4 of this rule, excluding vinyl chloride, each certified laboratory must meet the following requirements:~~

~~(A) Successfully analyze performance evaluation (PE) samples provided by EPA, the commissioner, or by a third~~

party with the approval of EPA or the commissioner, at least once a year by each method for which the laboratory desires certification.

~~(2) (B) Achieve the quantitative acceptance limits under subdivisions (3) and (4) clauses (C) and (D) for at least eighty percent (80%) of the regulated organic chemicals in section 5.4 of this rule, excluding vinyl chloride.~~

~~(3) (C) Achieve quantitative results on the analyses performed under subdivision (1) clause (A) that are within plus or minus twenty percent ($\pm 20\%$) of the actual amount of the substances in the PE sample when the actual amount is greater than or equal to ten-thousandths (0.010) milligrams per liter. (≥ 0.010 mg/l).~~

~~(4) (D) Achieve quantitative results on the analyses performed under subdivision (1) clause (A) that are within plus or minus forty percent ($\pm 40\%$) of the actual amount of the substances in the PE sample when the actual amount is less than ten-thousandths (0.010) milligrams per liter. (≤ 0.010 mg/l).~~

~~(5) (E) Achieve a method detection limit of five ten-thousandths (0.0005) milligram per liter, (0.0005 mg/l), according to the procedures in 40 CFR 136, Appendix B*.~~

~~(19) To receive certification to conduct analyses for vinyl chloride, the laboratory must meet the following requirements:~~

~~(1) (A) Successfully analyze PE samples provided by EPA, the commissioner, or by a third party with the approval of EPA or the commissioner, at least once a year by each method for which the laboratory desires certification.~~

~~(2) (B) Achieve quantitative results on the analyses performed under subdivision (1) clause (A) that are within plus or minus forty percent ($\pm 40\%$) of the actual amount of vinyl chloride in the PE sample.~~

~~(3) (C) Achieve a method detection limit of five ten-thousandths (0.0005) milligram per liter, (0.0005 mg/l), according to the procedures in 40 CFR 136, Appendix B*.~~

~~(4) (D) Obtain certification for the contaminants listed in section 5.4 of this rule.~~

~~(20) Each public water system shall monitor at the time designated by the commissioner within each compliance period.~~

~~(21) The commissioner may increase required monitoring where necessary to detect variations within the system.~~

~~(22) The commissioner has the authority to determine compliance or initiate enforcement based upon analytical results or other information.~~

(23) All new systems or systems that use a new source of water that begin operation after January 1, 2004, must demonstrate compliance with the MCL within a period of time specified by the commissioner. The system must also comply with the initial sampling frequencies specified by the commissioner to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

40 CFR 136, Appendix B is incorporated by reference.

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Copies of this regulation may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402, or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2-5.5; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1014; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Aug 24, 1994, 8:15 a.m.: 18 IR 39; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Oct 24, 1997, 4:30 p.m.: 21 IR 936; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3960; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1089*)

SECTION 8. 327 IAC 8-2-8.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-8.5 Requirement for filtration and disinfection

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 8.5. (a) Effective June 29, 1993, a public water system that uses a surface water source must provide filtration in accordance with this section.

(b) A public water system that uses a ground water source under the direct influence of surface water shall provide filtration in accordance with this section beginning eighteen (18) months after the commissioner determines that it is under the direct influence of surface water from the date specified in section 8.2 of this rule.

(c) A public water system that uses a surface water source or a ground water source under the direct influence of surface water must provide treatment consisting of both disinfection, as specified in section 8.6 of this rule, and filtration treatment. Filtration treatment shall be done by one (1) of the following techniques, and the turbidity level of representative samples of a system's filtered water, regardless of filtration technique used, shall at no time exceed five (5) nephelometric turbidity units (NTU) in any given sample, measured as specified in section 8.7 of this rule:

(1) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to one-half (0.5) NTU in at least ninety-five percent (95%) of the total number of measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule, except that if the commissioner determines that the system is capable of achieving at least ninety-nine and nine-tenths percent (99.9%) removal ~~and/or~~ or inactivation, **or both**, of *Giardia lamblia* cysts at some turbidity level higher than one-half (0.5) NTU in at least ninety-five percent (95%) of the total number of measurements taken each month, the commissioner may substitute this higher turbidity limit for that system. However, in no case may the commissioner approve a turbidity limit that

allows more than one (1) NTU in more than five percent (5%) of the samples taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule. Upon the effective date of this rule, systems serving a population of:

(A) at least ten thousand (10,000) individuals; and

(B) beginning January 1, 2005, fewer than ten thousand (10,000) individuals;

shall meet the turbidity requirements in 327 IAC 8-2.6-3.

(2) For systems using slow sand filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to one (1) NTU in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule, except where the commissioner determines that there is no significant interference with disinfection at a higher turbidity level.

(3) For systems using diatomaceous earth filtration, the turbidity level of representative samples of a public water system's filtered water must be less than or equal to one (1) NTU in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule.

(4) A public water system may use a filtration technology not listed in this subsection if it demonstrates to the commissioner, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of section 8.6 of this rule, consistently achieves ninety-nine and nine-tenths percent (99.9%) removal ~~and/or~~ or inactivation, **or both**, of *Giardia lamblia* cysts and ninety-nine and ninety-nine hundredths percent (99.99%) removal ~~and/or~~ or inactivation, **or both**, of viruses. For a system that makes this demonstration, ~~the requirements of this subsection apply.~~ **applies.** Upon the effective date of this rule, systems serving a population of:

(A) at least ten thousand (10,000) individuals; and

(B) beginning January 1, 2005, fewer than ten thousand (10,000) individuals;

shall meet the requirements for other filtration technologies in 327 IAC 8-2.6-3.

(d) During plant operation, each public water system subject to this section shall be operated only by personnel who have been certified by the commissioner under 327 IAC 8-11 through 327 IAC 8-12.

(e) In addition to complying with requirements in this section, systems serving a population of:

(1) at least ten thousand (10,000) individuals; and

(2) beginning January 1, 2005, fewer than ten thousand (10,000) individuals;

shall also comply with the requirements in ~~327 IAC 8-2.6-1~~ **327 IAC 8-2.6.** (*Water Pollution Control Board; 327 IAC 8-2-8.5; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1024; errata filed Apr 5, 1991, 3:30 p.m.: 14 IR 1626; errata, 14 IR 1730; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2160; filed May 1, 2003, 12:00 p.m.: 26 IR 2816*)

SECTION 9. 327 IAC 8-2-8.7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-8.7 Analytical and monitoring requirements; fecal coliform, total coliform, turbidity, disinfection

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 8.7. Only the analytical methods and procedures specified in this section, or otherwise approved by EPA, may be used to demonstrate compliance with the requirements of sections 8.5 and 8.6 of this rule. Measurements for pH, turbidity, temperature, and residual disinfectant concentrations must be conducted using methods specified in this rule. Measurements for total coliforms, fecal coliforms, and HPC must be conducted by a laboratory certified by the commissioner or EPA under 40 CFR 141.28*. Until laboratory certification criteria are developed for the analysis of fecal coliforms and HPC, any laboratory certified for total coliforms analysis by the commissioner or EPA is deemed certified for fecal coliforms and HPC analysis. The following procedures shall be conducted in accordance with the publications listed as follows:

- (1) Total coliform¹ as set forth in the following:
 - (A) Total coliform fermentation technique^{2, 3, 4}, Method 9221A* and B*, and C*.
 - (B) Total coliform membrane filter technique^{2, 6}, Method 9222A*, B*, and C*.
 - (C) ONPG-MUG test membrane⁵, Method 9223*.
 - (D) Presence-Absence (P-A) coliform test^{4, 7}, Method 9221D*.
 - (E) Colisure test^{8*}.
 - (F) E*Colite test*.
 - (G) m-ColiBlue24 test*.
 - (H) ReadyCult Coliforms 100 Presence/Absence test*.
 - (I) Membrane Filter Technique using Chromocult Coliform Agar*.
 - (J) Colitag test*.
- (2) Fecal coliforms¹ as set forth in:
 - (A) fecal coliform procedure^{7, 9}, Method 9221E*; or
 - (B) fecal coliform filter procedure, Method 9222D.
- (3) Heterotrophic bacteria¹, Method 9215B*, pour plate method.
- (4) Turbidity as set forth in:
 - (A) nephelometric method, Method 2130B* or Method 180.1*; or
 - (B) Great Lakes Instruments method, Method 2*.
- (5) Residual disinfectant concentrations for free chlorine and combined chlorine (chloramines) as set forth in the following methods:
 - (A) Method 4500-Cl D*, amperometric titration method.
 - (B) Method 4500-Cl F*, DPD ferrous titrimetric method.
 - (C) Method 4500-Cl G*, DPD colorimetric method.
 - (D) Method 4500-Cl H*, syringaldazine (FACTS).
 - (E) DPD colorimetric test kits, if approved by the commissioner.

(F) Free chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument, provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five (5) days, or with a protocol approved by the commissioner.

(6) Residual disinfectant concentrations for ozone by the indigo method, Method 4500-O₃ B*.

(7) Residual disinfectant concentrations for chlorine dioxide must be measured by Method 4500-ClO₂ C, amperometric method, Method 4500-ClO₂ E*, amperometric method, or Method 4500-ClO₂ D*, DPD method.

(8) Residual disinfectant concentrations for total chlorine by the following methods:

- (A) Method 4500-Cl D*, amperometric titration.
- (B) Method 4500-Cl E*, amperometric titration (low level measurement).
- (C) Method 4500-Cl F*, DPD ferrous titrimetric.
- (D) Method 4500-Cl I, iodometric electrode.
- (E) Method 4500-Cl G*, DPD colorimetric.
- (F) Total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument, provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five (5) days, or with a protocol approved by the commissioner.

¹The time from sample collection to initiation of analysis may not exceed ~~eight (8)~~ **thirty (30)** hours. Systems must hold samples below ten (10) degrees Celsius during transit.

²Lactose broth, as commercially available, may be used ~~in lieu~~ **instead** of lauryl tryptose broth if the system conducts at least twenty-five (25) parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliforms using lactose broth, is less than ten percent (10%).

³Media should cover inverted tubes at least one-half (½) to two-thirds (⅔) after the sample is added.

⁴No requirement exists to run the completed phase on ten percent (10%) of all total coliform-positive confirmed tubes.

⁵The ONPG-MUG test is also known as the Autoanalysis Colilert System.

⁶MI Agar may also be used*.

⁷~~Six (6) times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.~~

⁸**The Colisure test may be read after an incubation time of twenty-four (24) hours.**

⁹A-1 broth may be held up to three (3) months in a tightly closed screwcap tube at four (4) degrees Celsius.

*The following methods are incorporated by reference:

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(1) ~~Methods referenced in this section, except Method 180.1 and the Great Lakes Instruments Method 2, 2130B, 4500-CI D, 4500-CI E, 4500-CI F, 4500-CI G, 4500-CI H, 4500-CL-I, 4500-CIO₂ C, 4500-CIO₂ D, 4500-CIO₂ E, 9215B, 9221A, 9221B, 9221D, 9221E, 9222A, 9222B, 9222C, 9222D, and 9223 may be found in “18th Edition of Standard Methods for the Examination of Water and Wastewater”, and “19th Edition of Standard Methods for the Examination of Water and Wastewater”, and “20th Edition of Standard Methods for the Examination of Water and Wastewater”, 1992, and 1995, and 1998 available from the American Public Health Association, 1015 Fifteenth Street, Washington, D.C. 20005. Either edition~~ **The cited methods published in any of these three (3) editions may be used.**

(2) **Method 4500-O₃ B may be found in “18th Edition of Standard Methods for the Examination of Water and Wastewater” and “19th Edition of Standard Methods for the Examination of Water and Wastewater”, 1992 and 1995, available from the American Public Health Association, 1014 Fifteenth Street, Washington, D.C. 20005. Either edition may be used.**

(3) **A description of the Colisure Test, February 28, 1994, may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.**

(4) **A description of the E*Colite test, “Presence/Absence for Coliforms and E. coli in Water”, December 21, 1997, is available from Charm Sciences, Inc., 36 Franklin Street, Malden, Massachusetts 02148-4120.**

(5) **A description of the m-ColiBlue24 test, August 17, 1999, is available from the Hach Company, 100 Dayton Avenue, Ames, Iowa 50010.**

(6) **The ReadyCult Coliforms 100 Presence/Absence Test is described in the document “ReadyCult Coliforms 100 Presence/Absence Test for Indication of Coliform Bacteria and Escherichia coli in Finished Waters”, November 2000, Version 1.0, available from EM Science, an affiliate of Merck KggA of Darmstadt, Germany, 480 South Democrat Road, Gibbstown, New Jersey 08027-0342.**

(7) **Membrane Filter Technique using Chromocult Coliform Agar is described in the document “Chromocult Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and Escherichia coli in Finished Waters”, November 2000, Version 1.0, available from EM Science, an affiliate of Merck KggA of Darmstadt, Germany, 480 South Democrat Road, Gibbstown, New Jersey 08027-0342.**

(8) **Colitag product for the determination of presence/absence of total coliforms and E. coli is described in “Colitag Product as a Test for Detection and Identification of Coliforms and E. coli Bacteria in Drinking Water and Source Water as Required in National Primary Drinking Water Regulations”, August 2001, available from CPI International, Inc., 5580 Skylane Drive, Santa Rosa, California 95403. The telephone number is (800) 878-7654.**

(2) **(9) Method 180.1 may be found in “Methods for the Determination of Inorganic Substances in Environmental Samples”, EPA-600/R-93-100, August 1993, available from NTIS, PB94-121811, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.**

(3) **(10) The Great Lakes Instrument (GLI) Method 2 may be found in “Turbidity”, November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.**

(4) **(11) 40 CFR 141.28 may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.**

These methods are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2-8.7; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1025; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2161; filed Aug 25, 1997, 8:00 a.m.: 21 IR 53; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1348; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3970*)

SECTION 10. 327 IAC 8-2-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-9 Radium-226, radium-228, gross alpha particle radioactivity, and uranium; maximum contaminant levels

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 9. The following are the ~~maximum contaminant levels~~ **MCLs for radium-226, radium-228, and gross alpha particle radioactivity, and uranium:**

(1) Combined radium-226 and radium-228: five (5) picocuri per liter. **The combined radium-226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.**

(2) Gross alpha particle activity (including radium-226 but excluding radon and uranium): fifteen (15) picocuri per liter.

(3) Uranium: thirty (30) micrograms per liter.

(3) **(4) The sampling frequency for the contaminants listed in this section shall be pursuant to under section 10.2 of this rule.**

(5) The uranium MCL is effective December 8, 2003.

(*Water Pollution Control Board; 327 IAC 8-2-9; filed Sep 24, 1987, 3:00 p.m.: 11 IR 708; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1027*)

SECTION 11. 327 IAC 8-2-10.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-10.1 Analytical methods for radioactivity

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 10.1. (a) The following methods shall be used to deter-

mine compliance with sections 9 through 10 of this rule, except in cases where alternative methods have been approved in accordance with section 32 of this rule:

(1) One (1) of the following methods shall be used to test for gross alpha and beta¹:

- (A) Method 900.0*.
- (B) Page 1 of "Interim Radiochemical Methodology for Drinking Water**".
- (C) Method 00-01*.
- (D) Page 1 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples**".
- (E) Method 302*.
- (F) Method 7110 B*.
- (G) Method R-1120-76*.

(2) One (1) of the following methods shall be used to test for gross alpha¹:

- (A) Method 00-02*.
- (B) Method 7110 C*.

(3) One (1) of the following methods shall be used to test for radium 226:

- (A) Method 903.1*.
- (B) Method 903.0*.
- (C) Page 16 of "Interim Radiochemical Methodology for Drinking Water**".
- (D) Page 13 of "Interim Radiochemical Methodology for Drinking Water**".
- (E) Method Ra-04*.
- (F) Method Ra-03*.
- (G) Page 19 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples**".
- (H) Method 7500-Ra C*.
- (I) Method 304*.
- (J) Method 305*.
- (K) Method 7500-Ra B*.
- (L) Method ~~D 3454-91*~~ **D3454-97***.
- (M) Method ~~D 2460-90*~~ **D2460-97***.
- (N) Method R-1141-76*.
- (O) Method ~~R-1142-76*~~ **R-1140-76***.
- (P) Method ~~Ra-05*~~ **Ra-04***.
- (Q) New York Method*.

(4) One (1) of the following methods shall be used to test for radium 228:

- (A) Method 904.0*.
- (B) Page 24 of "Interim Radiochemical Methodology for Drinking Water**".
- (C) Method Ra-05*.
- (D) Page 19 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples**".
- ~~(E) Method 304*~~
- ~~(F)~~ **(E)** Method 7500-Ra D*.
- ~~(G)~~ **(F)** Method R-1142-76*.
- ~~(H)~~ **(G)** New York Method*.
- (H)** New Jersey Method*.

(5) One (1) of the following methods shall be used to test for uranium²:

- (A) Method 908.0*.
- (B) Method 908.1*.
- (C) Method 00-07*.
- (D) Page 33 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples**".
- (E) **Method** 7500-U B*.
- (F) **Method** 7500-U C*.
- (G) ~~D2907-91*~~ **Method D2907-97***.
- (H) ~~D 3972-90*~~ **Method D3972-97***.
- (I) ~~D 5174-91*~~ **Method D5174-97***.
- (J) **Method** R-1180-76*.
- (K) **Method** R-1181-76*.
- (L) **Method** R-1182-76*.
- (M) **Method** U-04*.
- (N) **Method** U-02*.
- (O) ~~New Jersey Method 200.8*~~.
- (P) Method D5673-03***.
- (Q) Method 3125***.

(6) One (1) of the following methods shall be used to test for radioactive cesium:

- (A) Method 901.0*.
- (B) Method 901.1*.
- (C) Page 92 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples**".
- (D) Method 7500-Cs B*.
- (E) Method 7120*.
- (F) Method D 2459-72*.
- (G) Method D 3649-91*.
- (H) Method R-1111-76*.
- (I) Method R-1110-76*.
- (J) Method 4.5.2.3*.
- (K) Page 4 of "Interim Radiochemical Methodology for Drinking Water**".**

(7) One (1) of the following methods shall be used to test for radioactive iodine:

- (A) Method 902.0*.
- (B) Method 901.1*.
- (C) Page 6 of "Interim Radiochemical Methodology for Drinking Water**".
- (D) Page 9 of "Interim Radiochemical Methodology for Drinking Water**".
- (E) Page 92 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples**".
- (F) Method 7500-I B*.
- (G) Method 7500-I C*.
- (H) Method 7500-I D*.
- (I) Method 7120*.
- ~~(J) Method D 4785-88*~~
- ~~(K)~~ **(J)** Method 4.5.2.3*.
- (K) Method D 3649-91***.

(8) One (1) of the following methods shall be used to test for radioactive strontium 89 and 90:

- (A) Method 905.0*.
- (B) Page 29 of "Interim Radiochemical Methodology for Drinking Water**".

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(C) Method Sr-04*.

(D) Page 65 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".

(E) Method 303*.

(F) Method 7500-Sr B*.

(G) Method R-1160-76*.

(H) Method Sr-01*.

(I) Method Sr-02*.

(9) One (1) of the following methods shall be used to test for tritium:

(A) Method 906.0*.

(B) Page 34 of "Interim Radiochemical Methodology for Drinking Water*".

(C) Method H-02*.

(D) Page 87 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".

(E) Method 306*.

(F) Method 7500-3H B*.

(G) Method D 4107-91*.

(H) Method R-1171-76*.

(10) One (1) of the following methods shall be used to test for gamma emitters:

(A) Method 901.1*.

(B) Method 902.0*.

(C) Method 901.0*.

(D) Page 92 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".

(E) Method 7120*.

(F) Method 7500-Cs B*.

(G) Method 7500-I B*.

(H) Method D 3649-91*.

(I) Method ~~D 4785-88*~~ **D4785-91***.

(J) Method R-1110-76*

(K) Method ~~4-5-2-3*~~ **Ga-01-R***.

¹Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with coprecipitation and evaporation methods; americum-241 is approved with coprecipitation methods.

²If uranium (U) is determined by mass, a 0.67 pCi/μg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U-235 and U-238 that is characteristic of naturally occurring uranium.

(b) When the identification and measurement of radionuclides other than those listed in subsection (a) is required, the following references are to be used, except in cases where alternative methods have been approved in accordance with section 32 of this rule:

(1) Procedures for Radiochemical Analysis of Nuclear Reactor Aqueous Solutions, H.L. Krieger and S. Gold, EPA-R4-73-014, U.S. EPA, Cincinnati, Ohio, May 1973.

(2) HASL Procedure Manual, edited by John H. Harley. HASL 300, ERDA Health and Safety Laboratory, New York, New York 1973.

(c) For the purpose of monitoring radioactivity concentrations

in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration ~~which that~~ can be counted with a precision of plus or minus one hundred percent (100%) at the ninety-five percent (95%) confidence level (one and ninety-six hundredths (1.96) σ where σ is the standard deviation of the net counting rate of the sample). Compliance requirements are as follows:

(1) To determine compliance with section 9(1) of this rule, the detection limit shall not exceed one (1) picocuri per liter.

(2) To determine compliance with section 9(2) of this rule, the detection limit shall not exceed three (3) picocuri per liter.

(3) To determine compliance with section 9(3) of this rule, the detection limit shall not exceed one (1) microgram per liter.

~~(3)~~ **(4)** To determine compliance with section 10 of this rule, the detection limits shall not exceed the concentrations listed in the following table:

Detection limits for manmade beta particle and photon emitters:

<u>Radionuclide</u>	<u>Detection limit</u>
Tritium	1,000 pCi/l
Strontium-89	10 pCi/l
Strontium-90	2 pCi/l
Iodine-131	1 pCi/l
Cesium-134	10 pCi/l
Gross beta	4 pCi/l
Other radionuclides	1/10 of the applicable limit

(d) To determine compliance with the MCL listed in sections 9 through 10 of this rule, averages of data shall be used and shall be rounded to the same number of significant figures as the MCL for the contaminant in question.

*The methods referenced in this section may be obtained as follows:

(1) Methods 900.0, 903.1, 903.0, 904.0, 908.0, 908.1, 901.0, 901.1, 902.0, 905.0, and 906.0 may be found in "Prescribed Procedures for Measurement of Radioactivity in Drinking Water", EPA 600/4-80-032, August 1980, PB 80-224744. Available from U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.

(2) "Interim Radiochemical Methodology for Drinking Water", EPA 600/4-75-008 (revised), March 1976, PB 253258. Available from U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.

(3) Methods 00-01, 00-02, Ra-04, Ra-03, Ra-05, 00-07, Sr-04, and H-02 may be found in "Radiochemistry Procedures Manual", EPA 520/5-84-006, December 1987, PB 84-215581. Available from U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.

(4) "Radiochemical Analytical Procedures for Analysis of Environmental Samples", March 1979, EMSL LV 053917. Available from U.S. Department of Commerce, National

Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.

(5) Methods **302, 303, 304, 305, 306, 3125, 7110 B, 7110 C, 7120, 7500-Ra C, 7500-Ra B, 7500-Ra D, 7500-U B, 7500-Cs B, 7500-I B, 7500-I C, 7500-I D, 7500-Sr B, 7500-U C, and 7500-3H B** may be found in "Standard Methods for the Analysis of Water and Wastewater", **13th, 17th, 18th, and 19th, or 20th Editions, 1971, 1989, 1992, and 1995, and 1998.** Available from American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. **Methods 302, 303, 304, 305, and 306 are only in the 13th Edition. Methods 7110B, 7500-Ra B, 7500-Ra C, 7500-Ra D, 7500-U B, 7500-Cs B, 7500-I B, 7500-I C, 7500-I D, 7500-Sr B, and 7500-3H C are in the 17th, 18th, 19th, and 20th Editions. Method 7110 C is in the 18th, 19th, and 20th Editions. Method 7500-U C (Fluorometric Uranium) is only in the 17th Edition, and Method 7500-U C (Alpha Spectrometry) is only in the 18th, 19th, and 20th Editions. Method 7120 is only in the 19th and 20th Editions. Method 3125 is only in the 20th Edition.**

(6) Methods ~~302, 304, 305, 303, and 306~~ may be found in "Standard Methods for the Analysis of Water and Wastewater", ~~13th Edition, 1971.~~ Available from American Public Health Association, ~~1015 Fifteenth Street N.W., Washington D.C. 20005.~~

(7) Method ~~7500-U C~~ may be found in "Standard Methods for the Analysis of Water and Wastewater", ~~13th and 17th Editions, 1971, 1989.~~ Available from American Public Health Association, ~~1015 Fifteenth Street N.W., Washington D.C. 20005.~~

(8) Method ~~7120~~ may be found in "Standard Methods for the Analysis of Water and Wastewater", ~~19th Edition, 1995.~~ Available from American Public Health Association, ~~1015 Fifteenth Street N.W., Washington D.C. 20005.~~

(9) (6) Methods ~~D 3454-91, D 2460-90, D 2907-91, D 3972-90, D 5174-91, D 2459-72, D 3649-91, D 4785-88, and D 4107-91~~ may be found in Annual Book of ASTM Standards, Vol 11.02, 1994. Available from American Society of Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. **Any Annual Book containing the cited version of the method may be used.**

(7) Methods ~~D 3454-97, D 2460-97, D 2907-97, D 3972-97, and D 5174-97~~ may be found in Annual Book of ASTM of ASTM Standards, Vol. 11.01 and 11.02, 1999. Available from American Society of Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. **Any Annual Book containing the cited version of the method may be used.**

(8) Method ~~D 5673-03~~ may be found in Annual Book of ASTM Standards, Vol. 11.02, May 2004. Available from American Society of Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. **Any Annual Book containing the cited version of the method may be used.**

(+0) (9) Methods ~~R-1120-76, R-1141-76, R-1140-76, R-1142-~~

~~76, R-1180-76, R-1181-76, R-1182-76, R-1111-76, R-1110-76, R-1160-76, and R-1171-76~~ may be found in "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments", Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available from U.S. Geologic Survey (USGS) Information Services, Box 25286, Federal Center, Denver, Colorado 80225-0425.

(+1) (10) Methods ~~U-04, U-2, Ra-04, Ra-05, 4.5.2.3, Sr-01, and Sr-02, and Ga-01-R~~ may be found in "EML Procedures Manual", 27th Edition, Volume 1, 1990 **or 28th Edition, Volumes 1 and 2, 1997. Either edition may be used. In the 27th Edition, Method Ra-04 is listed as Ra-05 and Method Ga-01-R is listed as Sect. 4.5.2.3.** Available from Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, New York 10014-3621.

(+2) (11) New York Methods may be found in "Determination of Ra-226 and Ra-228 (Ra-02)", January 1980, Revised June 1982. Available from Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, New York 12201.

(+3) (12) New Jersey Method may be found in "Determination of Radium 228 in Drinking Water", August 1980. Available from State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, New Jersey 08625.

(13) For uranium ICP-MS Method 200.8, refer to "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry", Revision 5.4, published in "Methods for the Determination of Metals in Environmental Samples- Supplement I", EPA 600-R-94-111, May 1994. Available at NTIS PB 95-125472.

(Water Pollution Control Board; 327 IAC 8-2-10.1; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1028; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3971)

SECTION 12. 327 IAC 8-2-10.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-10.2 Monitoring frequency for radioactivity; community water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 10.2. (a) Monitoring requirements for gross alpha particle activity, radium-226, ~~and radium-228, and uranium in community water systems~~ CWSs are as follows:

(1) Initial monitoring requirements for CWSs are as follows:

(A) CWSs must conduct initial monitoring to determine compliance with section 9 of this rule ~~shall be based on the analysis of an annual composite of four (4) consecutive quarterly samples or the average of the analyses of four (4) samples obtained at quarterly intervals as follows:~~

(A) A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis, provided that the measured gross alpha particle activity does not exceed five (5) picocuri per liter at a confidence level of ninety-five percent (95%) (one and sixty-five hundredths (1.65) σ where σ is the standard deviation of the net counting rate of this sample). In localities where radium-228 may be present in drinking water, it is recommended that the commissioner require radium-226 or radium-228, or both, analyses when the gross alpha particle activity exceeds two (2) picocuri per liter.

(B) When the gross alpha particle activity exceeds five (5) picocuri per liter, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds three (3) picocuri per liter, the same or an equivalent sample shall be analyzed for radium-228.

(2) Suppliers of water shall monitor at least once every four (4) years following the procedure required by subdivision (1). At the discretion of the commissioner, when an annual record taken in conformance with subdivision (1) has established that the average annual concentration is less than one-half ($\frac{1}{2}$) the MCL established by section 9 of this rule, analysis of a single sample may be substituted for the quarterly sampling procedure required by subdivision (1) as follows:

(A) More frequent monitoring shall be conducted when ordered by the commissioner in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or ground water sources of drinking water.

(B) A supplier of water shall monitor in conformance with subdivision (1) within one (1) year of the introduction of a new water source for a community water system. More frequent monitoring shall be conducted when ordered by the commissioner in the event of possible contamination, or when changes in the distribution system or treatment processing occur which may increase the concentration of radioactivity in finished water.

(C) A community water system using two (2) or more sources having different concentrations of radioactivity shall monitor source water, in addition to water from a free-flowing tap, when ordered by the commissioner.

(D) Monitoring for compliance with section 9 of this rule after the initial period need not include radium-228 except when required by the commissioner, provided that the average annual concentration of radium-228 has been assayed at least once using the quarterly sampling procedure required by subdivision (1).

(E) Suppliers of water shall conduct monitoring of any community water system in which the radium-226 concentration exceeds three (3) picocuri per liter, when ordered by the commissioner.

(3) If the average annual MCL for gross alpha particle activity or total radium as set forth in section 9 of this rule is exceeded, the supplier for a community water system shall report to the commissioner pursuant to section 13 of this rule

and notify the public pursuant to 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the MCL or until a monitoring schedule as a condition to an enforcement action shall become effective:

by December 31, 2007. Unless exempted under subdivision (2) or reduced under clause (D), systems must collect four (4) consecutive quarterly samples at all sampling points before December 31, 2007.

(B) For the purposes of monitoring for gross alpha particle activity, radium-226, radium-228, and uranium in drinking water, "detection limit" is as described in section 10.1(c) of this rule.

(C) Applicability and sampling location shall be according to the following:

(i) Every existing CWS or source using ground water or surface water or a system using both ground and surface water (to be known as "system" for purposes of this section) must sample at every entry point to the distribution system that is representative of all sources being used (to be known as "sampling point" for purposes of this section) under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source.

(ii) Every new CWS or source or CWS that uses a new source of water must conduct initial monitoring for the new source within the first quarter after initiating use of the source.

(iii) A system must conduct more frequent monitoring when ordered by the commissioner in the event of possible contamination or when changes in the distribution system or treatment processes occur that may increase the concentration of radioactivity in finished water.

(D) The commissioner may waive the final two (2) quarters of initial monitoring for a sampling point if the results of the samples from the previous two (2) quarters are below the detection limit.

(E) If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the commissioner.

(2) The commissioner may allow historical monitoring data, that which is collected at a sampling point between June 1, 2000, and December 8, 2003, to satisfy the initial monitoring requirements for that sampling point in the following situations:

(A) A CWS having only one (1) entry point to the distribution system may use its acceptable historical monitoring data from the latest sampling conducted during the specified period.

(B) A CWS with multiple entry points and having

appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the latest sampling conducted during the specified period.

(3) Sampling after completion of the initial monitoring specified in subdivision (1) is once every three (3) years unless reduced by the commissioner as follows:

(A) If the average of the initial monitoring results for each contaminant (gross alpha particle activity, uranium, radium-226, or radium-228) is below the detection limit specified in section 10.1 of this rule, the system must collect and analyze for at least one (1) sample for that contaminant at that sampling point every nine (9) years.

(B) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below one-half ($\frac{1}{2}$) the MCL:

(i) the system must collect and analyze at least one (1) sample for that contaminant at that sampling point every six (6) years; and

(ii) for combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the detection limit but at or below one-half ($\frac{1}{2}$) the MCL, the system must collect and analyze at least one (1) sample for radium-226 and radium-228 at that sampling point every six (6) years.

(C) Systems must use the samples collected during the most recent monitoring period to determine the monitoring frequency for subsequent monitoring periods. For example, if a system's sampling point is on a nine (9) year monitoring period and the sample result is above one-half ($\frac{1}{2}$) the MCL, then the next monitoring period for that sampling point is three (3) years.

(D) If a system has a monitoring result that exceeds the MCL while sampling less frequently than quarterly, the system must collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are below the MCL unless the system enters into another schedule as part of a formal compliance agreement with the commissioner.

(4) To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four (4) consecutive quarterly samples from a single entry point if analysis is done within one (1) year of the first sample. The commissioner will treat analytical results from the composited sample as the average analytical result to determine compliance with the MCLs and to determine the future monitoring frequency. If the analytical result from the composited sample is greater than one-half ($\frac{1}{2}$) the MCL, the commissioner may direct the system to take additional quarterly samples before allowing the system to sample once every three (3) years.

(5) A gross alpha particle activity measurement may be substituted for the required:

(A) radium-226 measurement provided that the measured gross alpha particle activity does not exceed five (5) pCi/l; and

(B) uranium measurement provided that the measured gross alpha particle activity does not exceed fifteen (15) pCi/l.

The gross alpha measurement shall have a confidence interval of ninety-five percent (95%) (1.65σ , where σ is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a system uses a gross alpha particle activity measurement instead of the measurement for radium-226 or uranium, or both, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 or uranium, or both. If the gross alpha particle activity result is less than detection, one-half ($\frac{1}{2}$) the detection limit will be used to determine compliance and the future monitoring frequency.

(b) For purposes of monitoring requirements for manmade beta particle and photon radioactivity in community drinking water, systems are as follows:

(1) Systems using surface water sources and serving more than one hundred thousand (100,000) persons and such other community water systems as are designated by the commissioner shall be monitored for "detection limit" is as described in section 10.1(c) of this rule. To determine compliance with the MCLs in section 10 of this rule by analysis of a composite of four (4) consecutive quarterly samples or analysis of four (4) quarterly samples. Compliance with section 10 of this rule may be assumed without further analysis if the average annual concentration of gross for beta particle activity is less than fifty (50) picocuri per liter and if the average annual concentrations of tritium and strontium-90 are less than those listed in the table in section 10 of this rule. Provided, that if both radionuclides are present, the sum of their annual dose equivalents to bone marrow shall not exceed four (4) millirem per year as follows:

(A) If the gross beta particle activity exceeds fifty (50) picocuri per liter an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with section 10 of this rule.

(B) Suppliers of water shall conduct additional monitoring, as ordered by the commissioner, to determine the concentration of manmade radioactivity in principal watersheds designated by the commissioner.

(C) At the discretion of the commissioner, suppliers of water utilizing only ground water may be required to monitor for manmade radioactivity.

(2) Suppliers of water shall monitor at least every four (4) years following the procedure given in subdivision (1).

(3) The supplier for any community water and photon

radioactivity, a system designated by the commissioner as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium must comply with monitoring and sampling frequency requirements as follows:

(1) CWSs (both surface and ground water) designated by the commissioner as vulnerable must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each sampling point beginning within one (1) quarter after being notified by the commissioner of the designation. Designated systems must continue to sample until the commissioner reviews and either reaffirms or removes the designation. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to fifty (50) pCi/l (screening level), the commissioner may reduce the frequency of monitoring at that sampling point to once every three (3) years. A system must continue to collect all other samples required by this subdivision during the reduced monitoring period.

(2) CWSs (both surface and ground water) designated by the commissioner as utilizing waters contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. A system designated under this subdivision must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system beginning within one (1) quarter after being notified by the commissioner of the designation. A system designated as using waters contaminated by effluents from a nuclear facility must continue to sample until the commissioner reviews and either reaffirms or removes the designation. The following monitoring and frequency of sampling requirements apply to vulnerable systems:

(A) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three (3) monthly samples. The former is recommended. If the gross beta particle activity in a sample exceeds fifteen (15) picocuri per liter, the same or an equivalent sample shall be analyzed for strontium-89 and cesium-134. If the gross beta particle activity exceeds fifty (50) picocuri per liter, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with section 10 of this rule.

(B) For iodine-131, a composite of five (5) consecutive daily samples shall be analyzed once each quarter. At the direction of the commissioner, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(C) Annual monitoring for strontium-90 and tritium shall be

conducted by analysis of a composite of four (4) consecutive quarterly samples or analysis of four (4) quarterly samples. The latter procedure is recommended.

(D) The commissioner may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of manmade radioactivity by the supplier of water where the commissioner determines such data are applicable to a particular community water system.

(4) (D) If the average annual MCL for manmade radioactivity set forth in section 10 of this rule is exceeded, the operator of a community water system shall report to the commissioner pursuant to section 13 of this rule and give notice to the public pursuant to 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the MCL or until a monitoring schedule as a condition to an enforcement action shall become effective. gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to fifteen (15) pCi/l (screening level), the commissioner may reduce the frequency of monitoring at that sampling point to once every three (3) years. Systems must collect all samples required in this subdivision during the reduced monitoring period.

(3) CWSs may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/l) by a factor of eighty-two hundredths (0.82). (4) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with section 10 of this rule using the formula in that section. Doses must be calculated and combined for measured levels of major radioactive constituents, tritium, and strontium to determine compliance.

(5) A system must monitor monthly at the sampling point or points that exceed the MCL in section 10 of this rule beginning the month after the exceedance occurs. A system must continue monthly monitoring until the system has established, by a rolling average of three (3) monthly samples, that the MCL is being met. A system that reestablishes compliance with the MCL must return to quarterly monitoring until the requirements set forth in subdivision (1) or (2)(D) are met.

(c) The following general monitoring and compliance

requirements for radionuclides apply:

- (1) The commissioner has the discretion to require:
 - (A) more frequent monitoring than specified in subsections (a) and (b); or
 - (B) confirmation samples.

The results of the initial and confirmation samples shall be averaged for use in compliance determinations.

- (2) A community public water system shall monitor at the time designated by the commissioner during each compliance period.
- (3) The following shall be used to determine whether a CWS is in compliance with sections 9 through 10 of this rule:

(A) Analytical results obtained at each sampling point must meet the applicable requirements of sections 9 through 10 of this rule. If one (1) sampling point is in violation of an MCL, the system is in violation of the MCL.

(B) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the running annual average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(C) For systems monitoring more than once per year, if any single sample result will cause the running average to exceed the MCL at any sample point, the system is out of compliance with the MCL immediately.

(D) A system must include all samples taken and analyzed under this section in determining compliance even if that number is greater than the minimum required.

(E) If a system does not collect all required samples when compliance with the MCL is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(F) If a sample result is less than the detection limit, zero (0) shall be used to calculate the annual average, unless a gross alpha particle activity is being used instead of radium-226 or uranium, or both. If the gross alpha particle activity result is less than detection, one-half (½) the detection limit will be used to calculate the annual average.

(4) The commissioner has the discretion to delete results of obvious sampling or analytic errors.

(5) If the MCL for radioactivity set forth in sections 9 through 10 of this rule is exceeded, the operator of a CWS must give notice to the commissioner under section 13 of this rule and to the public as required by 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.

(Water Pollution Control Board; 327 IAC 8-2-10.2; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1029; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1094; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254)

SECTION 13. 327 IAC 8-2-10.3 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2-10.3 Best available technologies, small systems compliance technologies (SSCTs), and compliance technologies by system size category for radionuclides

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-6

Affected: IC 13-14-9

Sec. 10.3. (a) Pursuant to Section 1412 of the Act, BATs for achieving compliance with sections 9 through 10 of this rule for radionuclides are identified in the following table:

Table 10.3(a)

BAT for Combined Radium-226 and Radium-228, Uranium, Gross Alpha Particle Activity, and Beta Particle and Photon Radioactivity

<u>Contaminant</u>	<u>BAT</u>
Combined radium-226 and radium-228	Ion exchange, reverse osmosis, lime softening
Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration
Gross alpha particle activity (excluding radon and uranium)	Reverse osmosis
Beta particle and photon radioactivity	Ion exchange, reverse osmosis

(b) The following table lists the small systems compliance technologies (SSCTs) for radionuclides and limitations of use:

Table 10.3(b)

List of Small Systems Compliance Technologies for Radionuclides and Limitations to Use

Unit Technologies	Limitations (see footnotes)	Operator Skill Level Required ¹	Raw Water Quality Range and Considerations ¹
1. Ion exchange (IE)	(a)	Intermediate	All ground waters.
2. Point of use (POU) ² IE	(b)	Basic	All ground waters.
3. Reverse osmosis (RO)	(c)	Advanced	Surface water usually require prefiltration.

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4. POU ² RO	(b)	Basic	Surface water usually require prefiltration.
5. Lime softening	(d)	Advanced	All waters.
6. Green sand filtration	(e)	Basic	-----
7. Coprecipitation with barium sulfate	(f)	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/electrodialysis reversal.	---	Basic to Intermediate	All ground waters.
9. Preformed hydrous manganese oxide filtration	(g)	Intermediate	All ground waters.
10. Activated alumina	(a), (h)	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	(i)	Advanced	Can treat a wide range of water qualities.

¹National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, D.C. 1997.

²A POU, or "point-of-use" technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000, Federal Register, concerning Notice of Data Availability (NODA) for more details.

Limitations Footnotes: Technologies for Radionuclides:

^aThe regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

^bWhen POU devices are used for compliance, programs for long term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.

^cReject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in, "Small System Compliance Technology List for the Surface Water Treatment Rule", 1997, EPA 815-R-97-002, Washington, D.C.

^dThe combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

^eRemoval efficiencies can vary depending on water quality.

^fThis technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

^gThis technology is most applicable to small systems that already have filtration in place.

^hHandling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

ⁱAssumes modification to a coagulation/filtration process already in place.

(c) The following table lists the compliance technologies by system size category for radionuclide national primary drinking water regulations (NPDWRs):

Table 10.3(c)
Compliance Technologies by System Size Category for Radionuclide NPDWRs

Contaminant	Compliance technologies ¹ for system size categories (population served)		
	25-500	501-3,300	3,300-10,000
1. Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9
2. Gross alpha particle activity	3, 4	3, 4	3, 4
3. Beta particle activity and photon activity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4
4. Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11

¹Numbers correspond to those technologies found listed in the table in subsection (b).

(Water Pollution Control Board; 327 IAC 8-2-10.3)

SECTION 14. 327 IAC 8-2-13 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-13 Reporting requirements; test results and failure to comply

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 13. (a) Except where a shorter period is specified in this rule, the supplier of water, ~~or the certified laboratory, as certified by the commissioner, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner;~~ shall report to the commissioner the results of any test measurement or analysis required by this rule within **the shorter of the following periods of time:**

- (1) The first ten (10) days following the month in which the result is received. ~~or~~
- (2) The first ten (10) days following the end of the required monitoring period as stipulated by the commissioner. ~~which ever is shorter.~~

(b) **Except where a different reporting period is specified in this rule,** the supplier of water, ~~or the certified laboratory, as certified by the commissioner, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner;~~ shall report to the commissioner within ~~forty-eight (48)~~ **twenty-four (24)** hours of completion of laboratory analysis **all drinking water results that indicate positive total coliform results, nitrate results that exceed five (5) milligrams per liter (mg/l), and the failure to comply with any MCL. and any other requirement set forth in this rule** ~~The report must be made by telephone or one (1) of the methods specified in subsection (e). If notification is made by telephone, the results must follow also be reported to the commissioner using one (1) of the methods specified in subsection (e) within forty-eight (48) hours of the telephone notification. If the supplier of water cannot provide the results under this subsection, the supplier of water shall make arrangements with the certified laboratory performing the analysis to submit the results directly to the commissioner using the methods specified in subsection (e).~~

(c) The supplier of water ~~or the certified laboratory, as certified by the commissioner, provided the supplier of water has granted permission in writing to the laboratory using forms provided by~~ **is not required to report analytical results to the commissioner and that permission is on file with the commissioner,** shall report **when the Indiana state laboratory performs the analysis and reports the results to the commissioner.** ~~within (48) hours of completion of laboratory analysis any positive total coliform results by telephone or the methods specified in subsection (e). If notification is made by telephone, the results must follow using one (1) of the methods specified in subsection (e) within forty-eight (48) hours of the telephone notification.~~

(d) The supplier of water, within ten (10) days of completing the public notification required by 327 IAC 8-2.1-7 through ~~327 IAC 8-2.1-16;~~ **327 IAC 8-2.1-17,** for the initial public notice and any repeat notices, shall submit to the commissioner a certification that it has fully complied with the public notification regulations. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

(e) The submittal of the information required under this section shall be submitted in one (1) of the following manners:

- (1) Mail.
- (2) Facsimile.
- (3) Electronic mail.
- (4) Hand delivery.
- (5) Other means determined by the commissioner to provide the degree of:
 - (A) confidentiality;
 - (B) reliability;
 - (C) convenience; and
 - (D) security;

appropriate to the information to be submitted.

(Water Pollution Control Board; 327 IAC 8-2-13; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1030; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3974; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1096; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254; filed May 1, 2003, 12:00 p.m.: 26 IR 2817)

SECTION 15. 327 IAC 8-2-34 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-34 Maximum contaminant level goals; inorganic contaminants

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-6
Affected: IC 13-14-9

Sec. 34. MCLGs for the following contaminants are as indicated:

<u>Contaminant</u>	<u>MCLG in Milligrams per Liter</u>
Fluoride	4.0
Asbestos	7 million fibers per liter (longer than 10 micrometers)
Barium	2
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0
Mercury	0.002
Nitrate	10 (as nitrogen)
Nitrite	1 (as nitrogen)
Total nitrate + nitrite	10 (as nitrogen)
Selenium	0.05
Antimony	0.006
Arsenic	0 ¹

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Beryllium	0.004
Cyanide (as free cyanide)	0.2
Nickel	0.1
Thallium	0.0005

'This value for arsenic is effective January 1, 2006. Until then, there is no MCLG.

(Water Pollution Control Board; 327 IAC 8-2-34; filed Aug 24, 1994, 8:15 a.m.: 18 IR 67)

SECTION 16. 327 IAC 8-2-34.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2-34.1 Maximum contaminant level goals; radionuclides

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-6

Affected: IC 13-14-9

Sec. 34.1. MCLGs for the following contaminants are as indicated:

<u>Contaminant</u>	<u>MCLG</u>
Combined radium-226 and radium-228	0
Gross alpha particle activity (excluding radon and uranium)	0
Beta particle and photon radioactivity	0
Uranium	0

(Water Pollution Control Board; 327 IAC 8-2-34.1)

SECTION 17. 327 IAC 8-2-45 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-45 Analytical methods; lead and copper

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16

Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 45. (a) Analysis for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using the following methods:

(1) Lead as follows:

(A) Atomic absorption; furnace technique, Method D3559-90D¹*, Method D3559-96*, or Method 3113B¹*.

(B) Inductively-coupled plasma; mass spectrometry, Method 200.8*.

(C) Atomic absorption; platform furnace technique, Method 200.9¹*.

(D) Differential pulse anodic stripping voltammetry, Method 1001*.

(2) Copper as follows:

(A) Atomic absorption; furnace technique, Method D1688-90C*, Method D1688-95C*, or Method 3113B*.

(B) Atomic absorption; direct aspiration, Method D1688-90A*, Method D1688-95A*, or Method 3111B*.

(C) Inductively-coupled plasma; Method 200.7* or Method 3120B*.

(D) Inductively-coupled plasma; mass spectrometry, Method 200.8*.

(E) Atomic absorption; platform furnace, Method 200.9*.

(3) pH, electrometric, Method 150.1*, Method 150.2*, Method D1293-84*, Method D1293-95*, or Method 4500-H⁺-B*.

(4) Conductivity, conductance, Method D1125-91A*, Method D1125-95A*, or Method 2510B*.

(5) Calcium as follows:

(A) EDTA titrimetric, Method D511-93A* or Method 3500-Ca-D*.

(B) Atomic absorption; direct aspiration, Method D511-93B* or Method 3111-B*.

(C) Inductively-coupled plasma, Method 200.7 or Method 3120B*.

(6) Alkalinity as follows:

(A) Titrimetric, Method D1067-92B* or Method 2320B.

(B) Electrometric titration, Method I-1030-85*.

(7) Orthophosphate, unfiltered, no digestion or hydrolysis as follows:

(A) Colorimetric, automated, ascorbic acid, Method 365.1* or Method 4500-P-F*.

(B) Colorimetric, ascorbic acid, single reagent, Method D515-88A* or Method 4500-P-E*.

(C) Colorimetric, phosphomolybdate, Method I-1601-85* or automated-segmented flow, Method I-2601-90*, or automated discrete, Method I-2598-85*.

(D) Ion chromatography, Method 300.0*, Method ~~D4327-91*~~, **D 4327-97***, or Method 4110B*.

(8) Silica as follows:

(A) Colorimetric, molybdate blue, Method I-1700-85 or automated-segmented flow, Method I-2700-85*.

(B) Colorimetric, Method D859-88* or Method D859-95*.

(C) Molybdosilicate, Method 4500-Si-D* **or Method 4500-SiO₂ C***.

(D) Heteropoly blue, Method 4500-Si-E* **or Method 4500-SiO₂ D***.

(E) Automated method for molybdate-reactive silica, Method 4500-Si-F* **or Method 4500-SiO₂ E***.

(F) Inductively-coupled plasma, Method 200.7* or Method 3120B*.

(9) Temperature, thermometric, Method 2550*.

'Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2× preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis, that is, no sample digestion, will be higher. Preconcentration may be required to direct analysis of lead by Method 200.9, Method 3113 B, and Method D 3559-90D unless multiple in-furnace depositions are made.

(b) Analyses for alkalinity, calcium, conductivity, orthophosphate, pH, silica, and temperature may be performed by any person acceptable to the commissioner. Analyses under this section for lead and copper shall only be conducted by laboratories that have been certified by the EPA or the commissioner. To obtain certification to conduct analysis for lead and copper, laboratories must do the following:

(1) Successfully analyze performance evaluation (PE) samples ~~which that~~ include lead and copper provided by or acceptable to EPA or the commissioner at least once each year by each method for which the laboratory desires certification.

(2) Achieve quantitative acceptance limits as follows:

(A) For lead, plus or minus thirty percent (30%) of the actual amount in the ~~performance evaluation PE~~ sample when the actual amount is greater than or equal to ~~five-thousandths (0.005)~~ **five-hundredths (0.05)** milligram per liter.

(B) For copper, plus or minus ten percent (10%) of the actual amount in the ~~performance evaluation PE~~ sample when the actual amount is greater than or equal to five-thousandths (0.005) milligram per liter.

(3) Achieve the method detection limit for lead of one-thousandth (0.001) milligram per liter according to the procedures in Appendix B of 40 CFR 136 (July 1, 1991). This need only be done if the laboratory will be processing source water composite samples under section 39 of this rule.

(4) Be currently certified by EPA or the state to perform analyses to the specifications described in subsection (a)(2).

(c) The commissioner has the authority to allow the use of previously collected monitoring data for purposes of monitoring if the data were collected and analyzed in accordance with ~~the requirements of~~ sections 36 through 44 of this rule, this section, and sections 46 and 47 of this rule.

(d) All lead levels measured between the practical quantitation level and the method detection limit must be either reported as measured or they can be reported as one-half ($\frac{1}{2}$) the practical quantitation level (twenty-five ~~thousandths (0.025)~~ **ten-thousandths (0.0025)** milligram per liter). All levels below the lead method detection level must be reported as zero (0).

(e) All copper levels measured between the practical quantitation level and the method detection limit must be either reported as measured or they can be reported as one-half ($\frac{1}{2}$) the practical quantitation level (twenty-five thousandths (0.025) milligram per liter). All levels below the copper method detection limit must be reported as zero (0).

¹For analyzing lead and copper, the technique applicable to total metals must be used and samples cannot be filtered.

*Methods referenced in this section may be obtained as follows:

(1) Methods 150.1 and 150.2, may be found in "Methods for Chemical Analysis of Water and Wastes", EPA/600/4-79/020, March 1983, available from NTIS, PB84-128677, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(2) Methods 200.7, 200.8, and 200.9 may be found in "Methods for the Determination of Metals in Environmental Samples-Supplement 1", EPA-600/R-94-111, May 1994, available from NTIS, PB95-125472, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(3) Methods D3559-90D, D1688-90C, D1688-90A, D1293-84, D1125-91A, and D859-88 may be found in "Annual Book of ASTM Standards", Vols. 11.01, 1994, American Society for Testing and Materials, available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. **Any year containing the cited version of the method may be used.**

(4) Methods D1067-92B, D511-93A, D511-93B, D1688-95C, D1688-95A, D1125-95A, D3559-96, D515-88A, D4327-91, D1293-95, and D859-95 may be found in "Annual Book of ASTM Standards, Vols. 11.01 and 11.02, 1994 and 1996, available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. **Any year containing the cited version of the method may be used.**

(5) Methods ~~2320B, 3113B, 3111B, 3120B, 4500-H⁺-B, 2510B, 3500-Ca-D, 2320B, 4500-P-F, 4500-P-E, 4110B, 4500-Si-D, 4500-Si-E, and 4500-Si-F, and 2550~~ may be found in "Standard Methods for the Examination of Water and Wastewater", 18th Edition, 1992, and "Standard Methods for the Examination of Water and Wastewater", 19th Edition, 1995, American Public Health Association, available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. Either edition may be used.

(6) Methods 2320B, 3111B, 3120B, 4500-H⁺-B, 2510B, 3500-Ca-D, 2320B, 4500-P-F, 4500-P-E, 4110B, and 2550 may be found in "Standard Methods for the Examination of Water and Wastewater", 18th Edition, 1992, and "Standard Methods for the Examination of Water and Wastewater", 19th Edition, 1995, and "Standard Methods for the Examination of Water and Wastewater", 20th Edition, 1998, American Public Health Association, available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. The cited methods published in any of the three (3) editions may be used.

(7) Methods 4500-SiO₂ C, 4500-SiO₂ D, and 4500-SiO₂ E may be found in "Standard Methods for the Examination of Water and Wastewater", 20th Edition, 1998, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

~~(6)~~ **(8)** Methods I-1030-85, I-1601-85, I-2598-85, I-1700-85, and I-2700-85 may be found in "Techniques of Water Resources Investigation of the U.S. Geological Survey", Book 5, Chapter A-1, 3rd Edition, 1989, available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, Colorado 80225-0425.

~~(7)~~ **(9)** Method I-2601-90 may be found in "Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory - Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments", Open File Report 93-125, 1993, available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, Colorado 80225-0425.

~~(8)~~ **(10)** Methods 365.1 and 300.0 may be found in "Methods

for the Determination of Inorganic Substances in Environmental Samples”, EPA-600/R-93-100, August 1993, available from NTIS, PB94-120821, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(9) (11) Method 1001 is available from Palintest, LTC, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, Kentucky 41018 or from the Hach Company, P.O. Box 389, Loveland, Colorado 80539-0389.

These methods are also available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2-45; filed Aug 24, 1994, 8:15 a.m.: 18 IR 82; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 532; filed Aug 25, 1997, 8:00 a.m.: 21 IR 72; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1349; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3978; errata filed Jul 25, 2001, 3:25 p.m.: 24 IR 3991*)

SECTION 18. 327 IAC 8-2-46 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-46 Reporting requirements; lead and copper

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 46. (a) Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring shall be as follows:

(1) Except as provided in clause (G), a water system shall report the following information for all tap water samples within the first ten (10) days following the end of each applicable monitoring period specified in sections 37 and 38 of this rule, that is, every six (6) months, annually, every three (3) years, or every nine (9) years:

(A) The results of all tap samples for lead and copper, including the location of each site and the criteria under section 37(a)(3) through 37(a)(7) of this rule, or any under which the site was selected for the system’s sampling pool.

(B) Documentation for each tap water lead or copper sample for which the system requests an invalidation ~~pursuant to under~~ section 37(f)(2) of this rule.

(C) The ninetieth percentile lead and copper concentrations measured from among all lead and copper tap samples collected during each monitoring period (calculated in accordance with section 36(c)(3) of this rule unless the commissioner calculates the system’s ninetieth percentile lead and copper levels under subsection (h)).

(D) With the exception of initial tap sampling conducted under section 37(d)(1) of this rule, the system shall designate any site ~~which that~~ was not sampled during previous monitoring periods and include an explanation of why sampling sites have changed.

(E) The results of all tap samples for pH and, where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under section 38(c) through 38(f) of this rule.

(F) The results of all samples collected at the entry point to the distribution system for applicable water quality parameters under section 38(c) through 38(f) of this rule.

(G) A water system shall report the results of all water quality parameter samples collected under section 38(c) through 38(f) of this rule during each six (6) month monitoring period specified in section 38(d) of this rule within the first ten (10) days following the end of the monitoring period unless the commissioner has specified a more frequent reporting requirement.

(2) For a ~~nontransient noncommunity water system~~ **an NTNCWS** or a ~~community water system~~ **CWS** meeting the criteria of section 44(c)(7)(A) and 44(c)(7)(B) of this rule that does not have enough taps that can provide first-draw samples, the system must do either of the following:

(A) Provide written documentation to the commissioner identifying standing times and locations for enough nonfirst-draw samples to make up its sampling pool under section 37(b)(5) of this rule by the start of the first applicable monitoring period under section 37(d) of this rule that commences after April 11, 2000, unless the commissioner has waived prior approval of nonfirst-draw sample sites selected by the system ~~pursuant to under~~ section 37(b)(5) of this rule.

(B) If the commissioner has waived prior approval of nonfirst-draw sample sites selected by the system, identify, in writing, each site that did not meet the six (6) hour minimum standing time and the length of the standing time for that particular substitute sample collected ~~pursuant to under~~ section 37(b)(5) of this rule and include this information with the lead and copper tap sample results required to be submitted ~~pursuant to under~~ subdivision (1)(A).

(3) No later than sixty (60) days after the addition of a new source or any change in water treatment unless the commissioner requires earlier notification, a water system deemed to have optimized corrosion control under section 40(b)(3) of this rule, a water system subject to reduced monitoring ~~pursuant to under~~ section 37(d)(4) of this rule, or a water system subject to a monitoring waiver ~~pursuant to under~~ section 37(g) of this rule, shall send written documentation to the commissioner describing the change. In those instances where prior approval by the commissioner of the treatment change or new source is not required, water systems are encouraged to provide the notification to the commissioner beforehand to minimize the risk the treatment change or new source will adversely affect optimal corrosion control.

(4) Any small system applying for a monitoring waiver under section 37(g) of this rule, or subject to a waiver granted ~~pursuant to under~~ section 37(g)(3) of this rule, shall provide the following information to the commissioner in writing by the specified deadline:

(A) By the start of the first applicable monitoring period in section 37(d) of this rule, any small water system applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the waiver criteria of

section 37(g)(1) and 37(g)(2) of this rule.

(B) No later than nine (9) years after the monitoring previously conducted ~~pursuant to~~ **under** section 37(g)(2) or 37(g)(4)(A) of this rule, each small system desiring to maintain its monitoring waiver shall provide the information required by section 37(g)(4)(A) and 37(g)(4)(B) of this rule.

(C) No later than sixty (60) days after ~~it~~ **the public water system** becomes aware that it is no longer free of lead or copper containing materials, or both, each small system with a monitoring waiver shall provide written notification to the commissioner, setting forth the circumstances resulting in the lead or copper containing materials, or both, being introduced into the system and what corrective action, if any, the system plans to remove these materials.

(D) By October 10, 2000, any small system with a waiver granted prior to April 11, 2000, and that has not previously met the requirements of section 37(g)(2) of this rule shall provide the information required.

(5) Each ground water system that limits water quality parameter monitoring to a subset of entry points under section 38(d)(3) of this rule shall provide, by the commencement of such monitoring, written correspondence to the commissioner that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(b) Source water monitoring reporting requirements shall be as follows:

(1) A water system shall report the sampling results for all source water samples collected in accordance with section 39 of this rule within the first ten (10) days following the end of each source water monitoring period, that is, annually, per compliance period, per compliance cycle, specified in section 39 of this rule.

(2) With the exception of the first round of source water sampling conducted under section 39(b) of this rule, the system shall specify any site ~~which that~~ was not sampled during previous monitoring periods and include an explanation of why the sampling point has changed.

(c) This subsection establishes requirements for corrosion control treatment reporting. By the applicable dates under section 40 of this rule, systems shall report the following information:

(1) For systems demonstrating that they already have optimized corrosion control, information required in section 40(b)(2) or 40(b)(3) of this rule.

(2) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under section 41(a) of this rule.

(3) For systems required to evaluate the effectiveness of corrosion control treatments under section 41(c) of this rule, the information required under that subsection.

(4) For systems required to install optimal corrosion control designated by the commissioner under section 41(d) of this

rule, a letter certifying that the system has completed installing that treatment.

(d) This subsection establishes requirements for source water treatment reporting. By the applicable dates in section 42 of this rule, systems shall provide the following information to the commissioner:

(1) If required under section 42(b)(1) of this rule, their recommendation regarding source water treatment.

(2) For systems required to install source water treatment under section 42(b)(2) of this rule, a letter certifying that the system has completed installing the treatment designated by the commissioner within twenty-four (24) months after the commissioner designated the treatment.

(e) This subsection establishes requirements for lead service line replacement reporting. Systems shall report the following information to the commissioner to demonstrate compliance with ~~the requirements of~~ section 43 of this rule:

(1) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in section 43(a) of this rule, the system shall demonstrate in writing to the commissioner that it has conducted a material evaluation, including the evaluation in section 37(a) of this rule, to identify the initial number of lead service lines in its distribution system, and shall provide the commissioner with the system's schedule for replacing annually at least seven percent (7%) of the initial number of lead service lines within its distribution system.

(2) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in section 43(a) of this rule, and every twelve (12) months thereafter, the system shall demonstrate to the commissioner in writing that the system has done either of the following:

(A) Replaced in the previous twelve (12) months, at least seven percent (7%) of the initial lead service lines (or a greater number of lines specified by the commissioner under section 43(e) of this rule) in its distribution system.

(B) Conducted sampling ~~which that~~ demonstrates that the lead concentration in all service line samples from an individual line, taken under section 37(b)(3) of this rule, is less than or equal to fifteen-thousandths (0.015) milligram per liter. In such cases, the total number of lines replaced and ~~which that~~ meet the criteria in section 43(b) of this rule shall equal at least seven percent (7%) of the initial number of lead lines identified under subsection (a) (or the percentage specified by the commissioner under section 43(e) of this rule).

(3) The annual letter submitted to the commissioner under subdivision (2) shall contain the following information:

(A) The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule.

(B) The number and location of each lead service line replaced during the previous year of the system's replacement schedule.

(C) If measured, the water lead concentration and location of each service line sampled, the sampling method, and the date of sampling.

(4) Any system that collects lead service line samples following partial lead service line replacement required by section 43 of this rule shall report the results to the commissioner within the first ten (10) days of the month following the month when the system receives the laboratory results or as specified by the commissioner. A system shall also report any additional information as specified by the commissioner. The results shall be reported in the time and manner prescribed by the commissioner to verify that all partial lead service line replacement activities have taken place.

(f) The following are requirements for public education program reporting:

(1) Any water system that is subject to the public education requirements in section 44 of this rule shall, within ten (10) days after the end of each period in which the system is required to perform public education tasks in accordance with section 44(c) of this rule, send written documentation to the commissioner that contains the following information:

(A) A demonstration that the system has delivered the public education materials that meet the content requirements in section 44(a) and 44(b) of this rule and the delivery requirements in section 44(c) of this rule.

(B) A list of all the:

- (i) newspapers;
- (ii) radio stations;
- (iii) television stations;
- (iv) facilities; and
- (v) organizations;

to which the system delivered public education materials during the period in which the system was required to perform the public education tasks.

(2) Unless required by the commissioner, a system that previously submitted the information required by subdivision (1)(B) **need not resubmit the information required** as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(g) Any system that collects sampling data in addition to that required by sections 36 through 45 of this rule, this section, and section 47 of this rule shall report the results to the commissioner within the first ten (10) days following the end of the applicable monitoring period under sections 37 through 39 of this rule during which the samples are collected.

(h) A water system is not required to report the ninetyeth percentile lead and copper concentrations measured from among all lead and copper tap water samples collected in each monitoring period as required by subsection (a)(1)(C) if the following conditions are met:

(1) The commissioner has previously notified the water system that it will calculate the water system's ninetyeth

percentile lead and copper concentrations, based on the lead and copper results submitted ~~pursuant to~~ **under** subdivision (2)(A), and has specified a date before the end of the applicable monitoring period by which the system must provide the results of lead and copper tap water samples.

(2) The system has provided the following information to the commissioner by the date specified in subdivision (1):

(A) The results of all tap samples for lead and copper including the location of each site and the criteria under section 37(a)(3), 37(a)(4), 37(a)(5), 37(a)(6), or 37(a)(7) of this rule, under which the site was selected for the system's sampling pool ~~pursuant to~~ **under** subsection (a)(1)(A).

(B) An identification of the sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods and an explanation why sampling sites have changed.

(3) The commissioner has provided the results of the ninetyeth percentile lead and copper calculations, in writing, to the water system before the end of the monitoring period.

(i) The information required by this section shall be submitted to the commissioner using the methods specified in section 13(e) of this rule. (*Water Pollution Control Board; 327 IAC 8-2-46; filed Aug 24, 1994, 8:15 a.m.: 18 IR 84; filed Oct 24, 1997, 4:30 p.m.: 21 IR 945; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3980; filed Oct 26, 2001, 4:55 p.m.: 25 IR 784; errata filed Oct 30, 2001, 10:50 a.m.: 25 IR 813; errata filed Feb 22, 2002, 1:59 p.m.: 25 IR 2254*)

SECTION 19. 327 IAC 8-2.1-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-3 Content of the reports

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 3. (a) A ~~community water system~~ **CWS** shall provide to its customers an annual report that contains the information specified in this section and section 4 of this rule.

(b) The report must contain information on the source of the water delivered, including the following:

(1) The source or sources of water delivered by the ~~community water system~~ **CWS** by including information on ~~the~~:

(A) ~~the~~ type of water, such as surface water or ground water; and

(B) ~~the~~ commonly used name, if any; and

(C) location of the body or bodies of water.

(2) If a source water assessment has been completed, the report must notify the consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information. Where a system has received a source water assessment from the commissioner, the report must include a brief summary of the system's susceptibility to

potential sources of contamination, using language provided by the commissioner or written by the operator.

(c) The report must include the following definitions:

~~(1) "Maximum contaminant level goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.~~

~~(2) (1) "Maximum contaminant level" or "MCL" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.~~

(2) "Maximum contaminant level goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(d) A report that contains data on contaminants that the department or EPA regulates and uses any of the following terms must include definitions, as applicable, of the terms used:

~~(1) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.~~

~~(2) (1) "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that a water system shall follow.~~

(2) "Maximum residual disinfectant level" or "MRDL" means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(3) "Maximum residual disinfectant level goal" or "MRDLG" means the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLG does not reflect the benefits of the use of disinfectants to control microbial contaminants.

(4) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(e) A report must include the information specified in this subsection for the following contaminants subject to mandatory monitoring, other than *Cryptosporidium*:

(1) Contaminants subject to an MCL, action level, or treatment technique, hereafter referred to as regulated contaminants.

(2) Disinfection byproducts or microbial contaminants for which monitoring is required by 40 CFR 141.142* and 40 CFR 141.143*, except as provided in subsection ~~(e)(1)~~, **(f)(1)** and that are detected in the finished water.

(3) The data relating to these contaminants must be displayed in one (1) table or in several adjacent tables. Any additional monitoring results that a ~~community water system~~ **CWS** chooses to include in its report must be displayed separately.

(4) The data must be derived from data collected to comply with EPA and department monitoring and analytical requirements during calendar year 1998 for the first report and

subsequent calendar years thereafter, except the following:

(A) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table or tables must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with ~~the regulations~~, **327 IAC 8-2, 327 IAC 8-2.5, 327 IAC 8-2.6, and 40 CFR 141.142* and 40 CFR 141.143*** need only be included.

(B) Results of monitoring in compliance with 40 CFR 141.142* and 40 CFR 141.143* need only be included:

- (i) for five (5) years from the date of the last sample; or
- (ii) until any of the detected contaminants becomes regulated and subject to routine monitoring requirements; whichever comes first.

(5) For detected regulated contaminants listed in section 6(a) of this rule, the table or tables must contain the following information:

(A) The MCL for that contaminant expressed as a number equal to or greater than one and zero tenths (1.0), as listed in section 6(a) of this rule.

(B) The MCLG for that contaminant expressed in the same units as the MCL.

(C) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report shall include the definitions for treatment technique or action level, or both, as appropriate, specified in subsection ~~(e)(4)~~, **(d)**.

(D) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with this rule and the range of detected levels as follows:

(i) When compliance with the MCL is determined annually or less frequently, the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point, the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the average and range of detection expressed in the same units as the MCL.

(E) When turbidity is reported ~~pursuant to~~ **under** 327 IAC 8-2-8.8 or 327 IAC 8-2.6-3, the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 327 IAC 8-2-8.8 or 327 IAC 8-2.6-3 for the filtration technology being used. The report must include an explanation of the reasons for measuring turbidity.

(F) For lead and copper, the ninetieth percentile value of the

most recent round of sampling and the number of sampling sites exceeding the action level.

(G) For total coliform, the highest monthly:

- (i) number of positive samples for systems collecting fewer than forty (40) samples per month; or
- (ii) percentage of positive samples for systems collecting at least forty (40) samples per month.

(H) For fecal coliform, the total number of positive samples.

(I) The likely source or sources of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments and must be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one (1) or more of the typical sources for that contaminant listed in section 6(b) of this rule that are most applicable to the system.

(6) If a ~~community water system~~ CWS distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources:

- (A) the table must contain a separate column for each service area, and the report must identify each separate distribution system; or
- (B) the system may produce separate reports tailored to include data for each service area.

(7) The table must clearly identify any data indicating violations of MCLs or treatment techniques, and the report must contain a clear and readily understandable explanation of the violation, including:

- (A) the length of the violation;
- (B) the potential adverse health effects; and
- (C) actions taken by the system to address the violation.

To describe the potential health effects, the system shall use the relevant language of section 6(c) of this rule.

(8) For detected unregulated contaminants for which monitoring is required (except *Cryptosporidium*), the table must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(f) Each report must contain the following information on *Cryptosporidium*, radon, and other contaminants:

(1) If the system has performed any monitoring for *Cryptosporidium*, including monitoring performed to satisfy the requirements of 40 CFR 141.143*, that indicates *Cryptosporidium* may be present in the source water or the finished water, the report must include:

- (A) a summary of the results of the monitoring; and
- (B) an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon that indicates radon may be present in the finished water, the report must include:

- (A) the results of the monitoring; and

(B) an explanation of the significance of the results.

(3) If the system has performed additional monitoring that indicates the presence of other contaminants in the finished water, the commissioner strongly encourages systems to report any results that may indicate a health concern. To determine if results may indicate a health concern, the commissioner recommends that systems find out if EPA has proposed a national primary drinking water regulation (NPDWR) or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline at (800) 426-4791. The commissioner and EPA consider levels detected above a proposed federal or state MCL or health advisory level to indicate possible health concerns. For such contaminants, the commissioner recommends that the report includes:

- (A) the results of the monitoring; and
- (B) an explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(g) In addition to the requirements of subsection ~~(d)(5)~~; **(e)(5)**, the report must note any violation of a requirement listed in this subsection that occurred during the year covered by the report and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation. Violations of the following requirements must be included:

- (1) Monitoring and reporting of compliance data.
- (2) Filtration and disinfection prescribed by 327 IAC 8-2-8.5 and 327 IAC 8-2-8.6. For systems that have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes that constitutes a violation, the report must include the following language as part of the explanation of potential health effects, "inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."
- (3) Lead and copper control requirements prescribed by 327 IAC 8-2-36 through 327 IAC 8-2-47. For systems that fail to take one (1) or more actions prescribed by 327 IAC 8-2-36(d) or 327 IAC 8-2-40 through 327 IAC 8-2-43, the report must include the applicable language from section 6(c) of this rule for lead or copper, or both.
- (4) Treatment techniques for acrylamide and epichlorohydrin prescribed by 327 IAC 8-2-35. For systems that violate 327 IAC 8-2-35, the report shall include the relevant language from section 6(c) of this rule.
- (5) Record keeping of compliance data.
- (6) Special monitoring requirements prescribed by 327 IAC 8-2-21.
- (7) Violation of the terms of an administrative or judicial order.

(h) The following additional information must be contained in the report:

- (1) A brief explanation regarding contaminants that may reasonably be expected to be found in drinking water,

including bottled water. This explanation may include the language in clauses (A) through (C), or systems may use their own comparable language. The report must also include the language of clause (D). The language is as follows:

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include the following:

(i) Microbial contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

(ii) Inorganic contaminants, such as salts and metals, that can be naturally-occurring or result from urban stormwater run-off, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

(iii) Pesticides and herbicides that may come from a variety of sources, such as agriculture, urban stormwater run-off, and residential uses.

(iv) Organic chemical contaminants, including synthetic and volatile organic chemicals, that are byproducts of industrial processes and petroleum production and can also come from gas stations, urban stormwater run-off, and septic systems.

(v) Radioactive contaminants that can be naturally-occurring or be the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the department and EPA prescribe regulations that limit the amount of certain contaminants in water provided by public water systems. Federal Drug Administration (FDA) regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

(D) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline at (800) 426-4791.

(2) The telephone number of the owner, operator, or designee of the community water system CWS as a source of additional information concerning the report.

(3) In communities with a large proportion of non-English speaking residents, in which twenty percent (20%) or more of the residents speak the same language other than English, the report must contain:

(A) information in the appropriate language or languages regarding the importance of the report; or ~~contain~~

(B) a telephone number or address where such residents may contact the system to obtain a translated copy of the

report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of water. This information may include, but is not limited to, the time and place of regularly scheduled board meetings.

(5) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.

*The Code of Federal Regulations (CFR) citations are incorporated by reference into this rule and are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, Twelfth Floor, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana 46206. (*Water Pollution Control Board*; 327 IAC 8-2.1-3; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1899; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3982; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1098; filed May 1, 2003, 12:00 p.m.: 26 IR 2818)

SECTION 20. 327 IAC 8-2.1-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-4 Required additional health information

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 4. (a) A report must prominently display the language: "Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons, such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. U.S. Environmental Protection Agency and Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline at (800) 426-4791."

(b) ~~If Ending in the report due by July 1, 2001,~~ a system that detects arsenic at levels above twenty-five (25) micrograms per liter, but below the MCL, it fifty (50) micrograms per liter, and beginning in the report due by July 1, 2002, a system that detects arsenic above five (5) micrograms per liter and up to and including ten (10) micrograms per liter shall do one (1) of the following:

(1) Include in its report the language: ~~"The U.S. Environmental Protection Agency is reviewing the a short informational statement about arsenic, using language such as "While your drinking water meets EPA's standard for arsenic, because of special concerns that it may not be stringent enough, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's~~

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possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a naturally-occurring mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.”

(2) Write its own educational statement, if ~~such~~ the statement is written in consultation with the commissioner, and include that statement in the report.

(c) If a system detects nitrate at levels above five (5) milligrams per liter, but below the MCL, ~~it the system~~ shall do one (1) of the following:

(1) Include in its report the language: “Nitrate in drinking water at levels above ten (10) parts per million is a health risk for infants of less than six (6) months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, seek advice from your health care provider.”

(2) Write its own educational statement, if ~~such~~ the statement is written in consultation with the commissioner, and include that statement in the report.

(d) If a system detects lead above the action level in more than five percent (5%), and up to and including ten percent (10%), of homes sampled, ~~it the system~~ shall do one (1) of the following:

(1) Include in its report the language: “Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home’s plumbing. If you are concerned about elevated lead levels in your home’s water, you may wish to have your water tested

and flush your tap for thirty (30) seconds to two (2) minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline at (800) 426-4791.”

(2) Write its own educational statement, if ~~such~~ the statement is written in consultation with the commissioner, and include that statement in the report.

(e) If a system detects ~~total trihalomethanes~~ **TTHM** above eight-hundredths (0.08) milligrams per liter, but below the MCL in 327 IAC 8-2-5(a), as an annual average, monitored and calculated under ~~the provisions of~~ 327 IAC 8-2-5.3, ~~it the system~~ shall include in its report the health effects language in table 17(G)(74) contained in section 17 of this rule.

(f) Beginning in the report due by July 1, 2002, and ending December 31, 2005, a CWS that detects arsenic above ten-hundredths (0.10) mg/l and up to and including fifty-hundredths (0.50) mg/l must include the arsenic health effects language in Table 17(B)(4) of section 17 of this rule. (Water Pollution Control Board; 327 IAC 8-2.1-4; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1902; filed May 1, 2003, 12:00 p.m.: 26 IR 2821)

SECTION 21. 327 IAC 8-2.1-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-6 Other required information

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 6. (a) In order to convert MCLs to numbers greater than or equal to one and zero-tenths (1.0) for the required table referenced in section 3 of this rule, a ~~community water system~~ **CWS** shall use the following table:

Table 6-1: Converting MCL Compliance Values for Consumer Confidence Reports

Contaminant	MCL in Compliance Units (mg/l)	multiply by...	MCL in CCR Units	MCLG in CCR Units
Microbiological contaminants				
1. Total coliform bacteria	5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).		5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).	0
2. Fecal coliform and E. coli	0		A routine sample and a repeat sample are total coliform positive, and one (1) is also fecal coliform or E. coli positive.	0
3. Total organic carbon	TT		TT	n/a
4. Turbidity	TT		TT (NTU)	n/a
Radioactive contaminants				

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5. Beta/photon emitters	4 mrem/year		4 mrem/year	0
6. Alpha emitters	15 pCi/l		15 pCi/l	0
7. Combined radium	5 pCi/l		5 pCi/l	0
8. Uranium	0.030	1,000	30 ppb	0
Inorganic contaminants				
8. 9. Antimony	0.006	1,000	6 ppb	6
9. 10. Arsenic	0.05 0.010¹	1,000	50 10¹ ppb	n/a 0¹
10. 11. Asbestos	7 MFL		7 MFL	7
11. 12. Barium	2		2 ppm	2
12. 13. Beryllium	0.004	1,000	4 ppb	4
14. Bromate	0.10	1,000	10 ppb	0
13. 15. Cadmium	0.005	1,000	5 ppb	5
16. Chloramines	MRDL = 4.0		MRDL = 4.0 ppm	MRDLG = 4
17. Chlorine	MRDL = 4.0		MRDL = 4.0 ppm	MRDLG = 4
18. Chlorine dioxide	MRDL = 0.8	1,000	MRDL = 800 ppb	MRDLG = 800
19. Chlorite	1		1 ppm	0.8
14. 20. Chromium	0.1	1,000	100 ppb	100
15. 21. Copper	AL = 1.3		AL = 1.3 ppm	1.3
16. 22. Cyanide	0.2	1,000	200 ppb	200
17. 23. Fluoride	4		4 ppm	4
18. 24. Lead	AL = 0.015	1,000	AL = 15 ppb	0
19. 25. Mercury (inorganic)	0.002	1,000	2 ppb	2
20. 26. Nitrate (as nitrogen)	10		10 ppm	10
21. 27. Nitrite (as nitrogen)	1		1 ppm	1
22. 28. Selenium	0.05	1,000	50 ppb	50
23. 29. Thallium	0.002	1,000	2 ppb	0.5
Synthetic organic contaminants including pesticides and herbicides				
24. 30. 2,4-D	0.07	1,000	70 ppb	70
25. 31. 2,4,5-TP (silvex)	0.05	1,000	50 ppb	50
26. 32. Acrylamide	TT		TT	0
27. 33. Alachlor	0.002	1,000	2 ppb	0
28. 34. Atrazine	0.003	1,000	3 ppb	3
29. 35. Benzo(a)pyrene (PAH)	0.0002	1,000,000	200 ppt	0
30. 36. Carbofuran	0.04	1,000	40 ppb	40
31. 37. Chlordane	0.002	1,000	2 ppb	0
32. 38. Dalapon	0.2	1,000	200 ppb	200
33. 39. Di(2-ethylhexyl)adipate	.4	1,000	400 ppb	400
34. 40. Di(2-ethylhexyl)phthalate	0.006	1,000	6 ppb	0
35. 41. Dibromochloropropane	0.0002	1,000,000	200 ppt	0
36. 42. Dinoseb	0.007	1,000	7 ppb	7
37. 43. Diquat	0.02	1,000	20 ppb	20
38. 44. Dioxin (2,3,7,8-TCDD)	0.00000003	1,000,000,000	30 ppq	0
39. 45. Endothall	0.1	1,000	100 ppb	100
40. 46. Endrin	0.002	1,000	2 ppb	2
41. 47. Epichlorohydrin	TT		TT	0
42. 48. Ethylene dibromide	0.00005	1,000,000	50 ppt	0
43. 49. Glyphosate	0.7	1,000	700 ppb	700
44. 50. Heptachlor	0.0004	1,000,000	400 ppt	0
45. 51. Heptachlor epoxide	0.0002	1,000,000	200 ppt	0
46. 52. Hexachlorobenzene	0.001	1,000	1 ppb	0
47. 53. Hexachlorocyclopentadiene	0.05	1,000	50 ppb	50
48. 54. Lindane	0.0002	1,000 1,000,000	200 ppt	200
49. 55. Methoxychlor	0.04	1,000	40 ppb	40

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50: 56. Oxamyl (vydate)	0.2	1,000	200 ppb	200
51: 57. PCBs (polychlorinated bi-phenyls)	0.0005	1,000,000	500 ppt	0
52: 58. Pentachlorophenol	0.001	1,000	1 ppb	0
53: 59. Picloram	0.5	1,000	500 ppb	500
54: 60. Simazine	0.004	1,000	4 ppb	4
55: 61. Toxaphene	0.003	1,000	3 ppb	0
Volatile organic contaminants				
56: 62. Benzene	0.005	1,000	5 ppb	0
57: Bromate	0.010	1,000	10 ppb	0
58: 63. Carbon tetrachloride	0.005	1,000	5 ppb	0
59: Chloramines	MRDL = 4		MRDL = 4 ppm	MRDLG = 4
60: Chlorine	MRDL = 4		MRDL = 4 ppm	MRDLG = 4
61: Chlorite	1		1 ppm	8
62: Chloride dioxide	MRDL = 8	1,000	MRDL = 800ppb	MRDLG = 800
63: 64. Chlorobenzene	0.1	1,000	100 ppb	100
64: 65. o-Dichlorobenzene	0.6	1,000	600 ppb	600
65: 66. p-Dichlorobenzene	0.075	1,000	75 ppb	75
66: 67. 1,2-Dichloroethane	0.005	1,000	5 ppb	0
67: 68. 1,1-Dichloroethylene	0.007	1,000	7 ppb	7
68: 69. cis-1,2-Dichloroethylene	0.07	1,000	70 ppb	70
69: 70. trans-1,2-Dichloroethylene	0.1	1,000	100 ppb	100
70: 71. Dichloromethane	0.005	1,000	5 ppb	0
71: 72. 1,2-Dichloropropane	0.005	1,000	5 ppb	0
72: 73. Ethylbenzene	0.7	1,000	700 ppb	700
73: 74. Haloacetic acids (HAA)	0.060	1,000	60 ppb	n/a
74: 75. Styrene	0.1	1,000	100 ppb	100
75: 76. Tetrachloroethylene	0.005	1,000	5 ppb	0
76: 77. 1,2,4-Trichlorobenzene	0.07	1,000	70 ppb	70
77: 78. 1,1,1-Trichloroethane	0.2	1,000	200 ppb	200
78: 79. 1,1,2-Trichloroethane	0.005	1,000	5 ppb	3
79: 80. Trichloroethylene	0.005	1,000	5 ppb	0
80: 81. TTHMs (total trihalomethanes)	0.1	1,000	100 ppb	n/a
81: 82. Toluene	1		1 ppm	1
82: 83. Vinyl chloride	0.002	1,000	2 ppb	0
83: 84. Xylenes	10		10 ppm	10

¹These arsenic values are effective January 1, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

Key:

AL = Action level.

MCL = Maximum contaminant level.

MCLG = Maximum contaminant level goal.

MFL = Million fibers per liter.

MRDL = Maximum residual disinfectant level.

MRDLG = Maximum residual disinfectant level goal.

mrem/year = Millirems per year (a measure of radiation absorbed by the body).

N/A = Not applicable

NTU = Nephelometric turbidity units.

pCi/l = Picocuries per liter (a measure of radioactivity).

ppm = Parts per million, or milligrams per liter (mg/l).

ppb = Parts per billion, or micrograms per liter (µg/l).

ppt = Parts per trillion, or nanograms per liter (ng/l).

ppq = Parts per quadrillion, or picograms per liter (pg/l).

TT = Treatment technique.

(b) In order to show potential sources of contamination for the table required by section 3 of this rule, a ~~community water system~~ CWS shall use the following table:

Table 6-2: Regulated Contaminants

Contaminant (units)	MCLG	MCL	Major Sources in Drinking Water
Microbiological contaminants			
1. Total coliform bacteria	0	5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).	Naturally present in the environment.
2. Fecal coliform and E. coli	0	A routine sample and a repeat sample are total coliform positive, and one (1) is also fecal coliform or E. coli positive.	Human and animal fecal waste.
3. Total organic carbon	n/a	TT	Naturally present in the environment.
4. Turbidity	n/a	TT	Soil run-off.
Radioactive contaminants			
5. Beta/photon emitters (mrem/year)	0	4	Decay of natural and manmade deposits.
6. Alpha emitters (pCi/l)	0	15	Erosion of natural deposits.
7. Combined radium (pCi/l)	0	5	Erosion of natural deposits.
8. Uranium (ppb)	0	30	Erosion of natural deposits.
Inorganic contaminants			
8: 9. Antimony (ppb)	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
9: 10. Arsenic (ppb)	n/a 0 ¹	50 10 ¹	Erosion of natural deposits; run-off from orchards; run-off from glass and electronics production wastes.
10: 11. Asbestos (MFL)	7	7	Decay of asbestos cement water mains; erosion of natural deposits.
11: 12. Barium (ppm)	2	2	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits.
12: 13. Beryllium (ppb)	4	4	Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries.
14. Bromate (ppb)	10	0	Byproduct of drinking water disinfection.
13: 15. Cadmium (ppb)	5	5	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; run-off from waste batteries and paints.
16. Chloramines (ppm)	MRDLG = 4	MRDL = 4.0	Water additive used to control microbes.
17. Chlorine (ppm)	MRDLG = 4	MRDL = 4.0	Water additive used to control microbes.
18. Chlorine dioxide (ppb)	MRDLG = 800	MRDL = 800	Water additive used to control microbes.

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19. Chlorite (ppm)	0.8	1	Byproduct from drinking water disinfection.
14: 20. Chromium (ppb)	100	100	Discharge from steel and pulp mills; erosion of natural deposits.
15: 21. Copper (ppm)	1.3	AL = 1.3	Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives.
16: 22. Cyanide (ppb)	200	200	Discharge from steel/metal factories; discharge from plastic and fertilizer factories.
17: 23. Fluoride (ppm)	4	4	Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories.
18: 24. Lead (ppb)	0	AL = 15	Corrosion of household plumbing systems; erosion of natural deposits.
19: 25. Mercury (inorganic) (ppb)	2	2	Erosion of natural deposits; discharge from refineries and factories; run-off from landfills; run-off from cropland.
20: 26. Nitrate (as nitrogen) (ppm)	10	10	Run-off from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits.
21: 27. Nitrite (as nitrogen) (ppm)	1	1	Run-off from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits.
22: 28. Selenium (ppb)	50	50	Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines.
23: 29. Thallium (ppb)	0.5	2	Leaching from ore-processing sites; discharge from electronics, glass, and drug factories.
Synthetic organic contaminants, including pesticides and herbicides			
24: 30. 2,4-D (ppb)	70	70	Run-off from herbicide used on row crops.
25: 31. 2,4,5-TP (Silvex) (ppb)	50	50	Residue of banned herbicide.
26: 32. Acrylamide	0	TT	Added to water during sewage/wastewater treatment.
27: 33. Alachlor (ppb)	0	2	Run-off from herbicide used on row crops.
28: 34. Atrazine (ppb)	3	3	Run-off from herbicide used on row crops.
29: 35. Benzo(a)pyrene (PAH) (ppt)	0	200	Leaching from linings of water storage tanks and distribution lines.
30: 36. Carbofuran (ppb)	40	40	Leaching of soil fumigant used on rice and alfalfa.
31: 37. Chlordane (ppb)	0	2	Residue of banned termiticide.
32: 38. Dalapon (ppb)	200	200	Run-off from herbicide used on rights-of-way.
33: 39. Di(2-ethylhexyl)adipate (ppb)	400	400	Discharge from chemical factories.
34: 40. Di(2-ethylhexyl)phthalate (ppb)	0	6	Discharge from rubber and chemical factories.
35: 41. Dibromochloropropane (ppt)	0	200	Run-off/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.

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36: 42. Dinoseb (ppb)	7	7	Run-off from herbicide used on soybeans and vegetables.
37: 43. Diquat (ppb)	20	20	Run-off from herbicide use.
38: 44. Dioxin (2,3,7,8-TCDD) (ppq)	0	30	Emissions from waste incineration and other combustion; discharge from chemical factories.
39: 45. Endothall (ppb)	100	100	Run-off from herbicide use.
40: 46. Endrin (ppb)	2	2	Residue of banned insecticide.
41: 47. Epichlorohydrin	0	TT	Discharge from industrial chemical factories; an impurity of same some water treatment chemicals.
42: 48. Ethylene dibromide (ppt)	0	50	Discharge from petroleum refineries.
43: 49. Glyphosate (ppb)	700	700	Run-off from herbicide use.
44: 50. Heptachlor (ppt)	0	400	Residue of banned termiticide pesticide .
45: 51. Heptachlor epoxide (ppt)	0	200	Breakdown of heptachlor.
46: 52. Hexachlorobenzene (ppb)	0	1	Discharge from metal refineries and agricultural chemical factories.
47: 53. Hexachlorocyclopentadiene (ppb)	50	50	Discharge from chemical factories.
48: 54. Lindane (ppt)	200	200	Run-off/leaching from insecticide used on cattle, lumber, and gardens.
49: 55. Methoxychlor (ppb)	40	40	Run-off/leaching from insecticide used on fruits, vegetables, alfalfa, and livestock.
50: 56. Oxamyl (vydate) (ppb)	200	200	Run-off/leaching from insecticide used on apples, potatoes, and tomatoes.
51: 57. PCBs (polychlorinated biphenyls) (ppt)	0	500	Run-off from landfills; discharge of waste chemicals.
52: 58. Pentachlorophenol (ppb)	0	1	Discharge from wood preserving factories.
53: 59. Picloram (ppb)	500	500	Herbicide run-off.
54: 60. Simazine (ppb)	4	4	Herbicide run-off.
55: 61. Toxaphene (ppb)	0	3	Run-off/leaching from insecticide used on cotton and cattle.
Volatile organic contaminants			
56: 62. Benzene (ppb)	0	5	Discharge from factories; leaching from gas storage tanks and landfills.
57: Bromate (ppb)	0	10	Byproduct of drinking water chlorination.
58: 63. Carbon tetrachloride (ppb)	0	5	Discharge from chemical plants and other industrial activities.
59: Chloramines (ppm)	MRDLG = 4	MRDL = 4	Water additive used to control microbes.
60: Chlorine (ppm)	MRDLG = 4	MRDL = 4	Water additive used to control microbes.
61: Chlorite (ppm)	.8	1	Byproduct of drinking water chlorination.
62: Chloride dioxide (ppb)	MRDLG = 800	MRDL = 800	Water additive used to control microbes.
63: 64. Chlorobenzene (ppb)	100	100	Discharge from chemical and agricultural chemical factories.
64: 65. o-Dichlorobenzene (ppb)	600	600	Discharge from industrial chemical factories.
65: 66. p-Dichlorobenzene (ppb)	75	75	Discharge from industrial chemical factories.

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66: 67. 1,2-Dichloroethane (ppb)	0	5	Discharge from industrial chemical factories.
67: 68. 1,1-Dichloroethylene (ppb)	7	7	Discharge from industrial chemical factories.
68: 69. cis-1,2-Dichloroethylene (ppb)	70	70	Discharge from industrial chemical factories.
69: 70. trans-1,2-Dichloroethylene (ppb)	100	100	Discharge from industrial chemical factories.
70: 71. Dichloromethane (ppb)	0	5	Discharge from pharmaceutical and chemical factories.
71: 72. 1,2-Dichloropropane (ppb)	0	5	Discharge from industrial chemical factories.
72: 73. Ethylbenzene (ppb)	700	700	Discharge from petroleum refineries.
73: 74. Haloacetic Acids (HAA) (ppb)	n/a	60	Byproduct of drinking water disinfection.
74: 75. Styrene (ppb)	100	100	Discharge from rubber and plastic factories; leaching from landfills.
75: 76. Tetrachloroethylene (ppb)	0	5	Discharge from factories and dry cleaners.
76: 77. 1,2,4-Trichlorobenzene (ppb)	70	70	Discharge from textile-finishing factories.
77: 78. 1,1,1-Trichloroethane (ppb)	200	200	Discharge from metal degreasing sites and other factories.
78: 79. 1,1,2-Trichloroethane (ppb)	3	5	Discharge from industrial chemical factories.
79: 80. Trichloroethylene (ppb)	0	5	Discharge from metal degreasing sites and other factories.
80: 81. TTHMs (total trihalomethanes) (ppb)	n/a	100 80	Byproduct of drinking water chlorination.
81: 82. Toluene (ppm)	1	1	Discharge from petroleum factories.
82: 83. Vinyl chloride (ppb)	0	2	Leaching from PVC piping; discharge from plastics factories.
83: 84. Xylenes (ppm)	10	10	Discharge from petroleum factories; discharge from chemical factories.

¹These arsenic values are effective January 1, 2006. Until then, the MCL is 0.05 mg/l and there is no MCLG.

Key:

AL = Action level.

MCL = Maximum contaminant level.

MCLG = Maximum contaminant level goal.

MFL = Million fibers per liter.

MRDL = Maximum residual disinfectant level.

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mrem/year = millirems per year (a measure of radiation absorbed by the body).

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ppb = Parts per billion, or micrograms per liter (µg/l).

ppt = Parts per trillion, or nanograms per liter (ng/l).

ppq = Parts per quadrillion, or picograms per liter (pg/l).

TT = Treatment technique.

(c) The language in section 17 of this rule shall be used if there is a violation referenced in section 3 of this rule and health effects language is required. ~~unless alternate language is listed in this subsection as follows:~~

(1) Fecal coliform/E. coli: Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with animal or human wastes. Microbes in these wastes can cause short term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

(2) Fluoride: Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.

(Water Pollution Control Board; 327 IAC 8-2.1-6; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1903; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1100; filed May 1, 2003, 12:00 p.m.: 26 IR 2822)

SECTION 22. 327 IAC 8-2.1-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-8 Tier 1 public notice; form, manner, and frequency of notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 8. (a) The following violations or situations require a Tier 1 public notice:

- (1) Violation of the MCL for total coliforms when fecal coliform or E. coli are present in the water distribution system as specified in 327 IAC 8-2-7(b), or the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform as specified in 327 IAC 8-2-8.3.
- (2) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in 327 IAC 8-2-4, or when the water system fails to take a confirmation sample within twenty-four (24) hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in 327 IAC 8-2-4.1(h)(2).
- (3) Exceedance of the nitrate MCL by noncommunity water systems, where permitted to exceed the MCL by the commissioner under 327 IAC 8-2-4 **and section 14 of this rule.**
- (4) Violation of the 327 IAC 8-2-8.5(c) **or 327 IAC 8-2.6-1** treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit as identified in section 16 of this rule, where the commissioner determines after consultation that a Tier 1 notice is required or where consultation does not take place within twenty-four (24) hours after the system learns of the violation.
- (5) Occurrence of a waterborne disease outbreak, as defined in 327 IAC 8-2-1, or other waterborne emergency. This includes failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.
- (6) Other violations or situations with significant potential to

have serious adverse effects on human health as a result of short term exposure, as determined by the commissioner either in its regulations or on a case-by-case basis.

(7) Violation of the MRDL for chlorine dioxide as defined in 327 IAC 8-2.5-3(a) and determined according to 327 IAC 8-2.5-5 **when one (1) or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system, as specified in 327 IAC 8-2.5-7(c)(2).**

(b) Tier 1 public notice needs to be provided as follows:

- (1) Provide a public notice as soon as practical but no later than twenty-four (24) hours after the system learns of the violation.
- (2) Initiate consultation with the commissioner as soon as practical, but no later than twenty-four (24) hours after the public water system learns of the violation or situation, to determine additional public notice requirements.
- (3) Comply with any additional public notification requirements that are established as a result of the consultation with the commissioner, including any repeat notices or direction on the duration of the posted notices. To reach all persons served, such requirements may include **the following:**

- (A) Timing.
- (B) Form.
- (C) Manner.
- (D) Frequency. ~~and~~
- (E) Content of repeat notices and other actions designed.

(4) Public water systems must provide the notice within twenty-four (24) hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and nontransient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one (1) or more of the following forms of delivery:

- (A) Appropriate broadcast media, such as:
 - (i) radio; or
 - (ii) television.
- (B) Posting of the notice in conspicuous locations throughout the area served by the water system.
- (C) Hand delivery of the notice to persons served by the water system.
- (D) Another delivery method approved in writing by the commissioner.
- (5) A community public water system shall give a copy of the most recent public notice to all new billing units or new hookups ~~prior to before~~ or at the time service begins for any of the following outstanding violations:
 - (A) Any ~~maximum contaminant level:~~ **MCL.**
 - (B) Any ~~maximum residual disinfectant level:~~ **MRDL.**
 - (C) Any treatment technique requirement.

(c) For violations of the MRDLs of disinfectants that may pose an

acute risk to human health, a copy of the notice must be furnished to the radio and television stations serving the area served by the public water system as soon as possible but in no case later than seventy-two (72) hours after the violation. (*Water Pollution Control Board; 327 IAC 8-2.1-8; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1110; filed May 1, 2003, 12:00 p.m.: 26 IR 2828*)

SECTION 23. 327 IAC 8-2.1-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-9 Tier 2 notice; form, manner, and frequency of notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 9. (a) The following violations or situations require a Tier 2 public notice:

- (1) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under section 8(a) of this rule or where the commissioner determines a Tier 1 notice is required.
- (2) Violations of the monitoring and testing procedure requirements, where the commissioner determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation.

(b) Tier 2 public notice needs to be provided as follows:

- (1) Public water systems must provide the public notice as soon as practical, but no later than thirty (30) days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven (7) days, even if the violation or situation is resolved. The commissioner may, in appropriate circumstances, allow additional time for the initial notice of up to three (3) months from the date the system learns of the violation. It is not appropriate for the commissioner to grant an extension to the thirty (30) day deadline for any unresolved violation or to allow across-the-board extensions by rule or policy for other violations or situations requiring a Tier 2 public notice. Extensions granted by the commissioner must be in writing.
- (2) The public water system must repeat the notice every three (3) months as long as the violation or situation persists, unless the commissioner determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. It is not appropriate for the commissioner to allow less frequent repeat notice for an MCL violation under the 327 IAC 8-2-7, 327 IAC 8-2-8, 327 IAC 8-2-8.1, and 327 IAC 8-2-8.3 or a treatment technique violation under 327 IAC 8-2-8.5, 327 IAC 8-2-8.6, and 327 IAC 8-2-8.8. The commissioner determinations allowing repeat notices to be given less frequently than once every three (3) months must be in writing.

(3) If there is a violation of the treatment technique requirement in 327 IAC 8-2-8.5(c) or **327 IAC 8-2.6-1** that results from a single exceedance of the maximum allowable turbidity limit, then public water systems must consult with the commissioner as soon as practical but no later than twenty-four (24) hours after the public water system learns of the violation, to determine whether a Tier 1 public notice under section 8(a) of this rule is required to protect public health. When consultation does not take place within the twenty-four (24) hour period, the water system must distribute a Tier 1 notice of the violation within the next twenty-four (24) hours (for example, no later than forty-eight (48) hours after the system learns of the violation), following the requirements under section 8(b) and 8(c) of this rule.

(c) Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but **the public notice** must at a minimum meet the following requirements:

(1) Unless directed otherwise by the commissioner in writing, ~~community water systems~~ **CWSs** must provide notice by the following methods:

(A) Mail or other direct delivery to:

(i) each customer receiving a bill; and ~~to~~

(ii) other service connections to which water is delivered by the public water system.

(B) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (A). Such persons may include those who do not pay water bills or do not have service connection addresses, including any of the following:

(i) House renters.

(ii) Apartment dwellers.

(iii) University students.

(iv) Nursing home patients.

(v) Prison inmates.

(C) Other methods may include any of the following:

(i) Publication in a local newspaper.

(ii) Delivery of multiple copies for distribution by customers that provide their drinking water to others, such as:

(AA) apartment building owners; or

(BB) large private employers.

(iii) Posting in public places served by the system or on the Internet.

(iv) Delivery to community organizations.

(2) Unless directed otherwise by the commissioner in writing, noncommunity water systems must provide notice by the following methods:

(A) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system.

(B) By mail or direct delivery to each customer and service

connection if known.

(C) Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in clauses (A) and (B). Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include:

- (i) publication in a local newspaper or newsletter distributed to customers;
- (ii) use of e-mail to notify employees or students; or
- (iii) delivery of multiple copies in central locations, such as community centers.

(Water Pollution Control Board; 327 IAC 8-2.1-9; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1110)

SECTION 24. 327 IAC 8-2.1-14 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-14 Special notice for nitrate exceedances above MCL by noncommunity water systems; granted permission by the commissioner under 327 IAC 8-2-4(b)

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 14. (a) The owner or operator of a noncommunity water

system granted permission by the commissioner under 327 IAC 8-2-4(b) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under ~~327 IAC 8-2-8.1~~ **section 8 of this rule.**

(b) Noncommunity water systems granted permission by the commissioner to exceed the nitrate MCL under 327 IAC 8-2-4(b) must provide continuous posting of **the:**

(1) ~~the~~ fact that nitrate levels exceed ten (10) milligrams per liter; and

(2) ~~the~~ potential health effects of exposure;

in accordance with the requirements for Tier 1 notice delivery under section 8 of this rule and the content requirements under section 11 of this rule. *(Water Pollution Control Board; 327 IAC 8-2.1-14; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1114)*

SECTION 25. 327 IAC 8-2.1-16 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-16 Drinking water violations; other situations requiring public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 16. (a) Drinking water violations and other situations that require public notice according to this rule are contained in the following table:

Table 16. Drinking Water Violations and Other Situations Requiring Public Notice				
Contaminant	MCL/MRDL/TT/AL Violations		Monitoring and Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
I. Violations of Drinking Water Regulations:				
A. Microbiological Contaminants				
1. Total coliform	2	327 IAC 8-2-7(a)	3	327 IAC 8-2-8 327 IAC 8-2-8.1 327 IAC 8-2-8(f) 327 IAC 8-2-8.2 327 IAC 8-2-8.3
2. Fecal coliform/E. coli	1	327 IAC 8-2-7(b)	1, 3	327 IAC 8-2-8.3
3. Turbidity TT (resulting from a single exceedance of maximum allowable turbidity levels)	2,1	327 IAC 8-2-8.5(a) 327 IAC 8-2.6-3(1)(B) 327 IAC 8-2.6-3(2) 327 IAC 8-2.6-3(3)	3	327 IAC 8-2-8.8(b) 327 IAC 8-2.6-4
4. Surface water treatment rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	327 IAC 8-2-8.5 327 IAC 8-2-8.6	3	327 IAC 8-2-8.8
5. Interim enhanced surface water treatment rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	327 IAC 8-2.6-1 327 IAC 8-2.6-2 327 IAC 8-2.6-3	3	327 IAC 8-2.6-2 327 IAC 8-2.6-4

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6. Filter backwash recycling rule	2	327 IAC 8-2.6-6	3	327 IAC 8-2.6-6
7. Long term 1 enhanced surface water treatment rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	327 IAC 8-2.6-1 327 IAC 8-2.6-2.1 327 IAC 8-2.6-3	3	327 IAC 8-2.6-2.1 327 IAC 8-2.6-4
B. Inorganic Chemicals (IOCs)				
1. Antimony	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
2. Arsenic	2	327 IAC 8-2-4(d) 327 IAC 8-2-4.1(1)(5)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(1)(3) 327 IAC 8-2-4.1(1)(4) 327 IAC 8-2-4.1(e)
3. Asbestos (fibers >10 µm)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(d)
4. Barium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
5. Beryllium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
6. Cadmium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
7. Chromium (total)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
8. Cyanide	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
9. Fluoride	2	327 IAC 8-2-4(c)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
10. Mercury (inorganic)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
11. Nitrate	1	327 IAC 8-2-4(b)	1, 3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(f) 327 IAC 8-2-4.1(h)(2)
12. Nitrite	1	327 IAC 8-2-4(b)	1, 3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(g) 27 IAC 8-2-4.1(h)(2)
13. Total nitrate and nitrite	1	327 IAC 8-2-4(b)	3	327 IAC 8-2-4.1(c)
14. Selenium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
15. Thallium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
C. Lead and Copper Rule				
1. Lead and copper rule (TT)	2	327 IAC 8-2-36 327 IAC 8-2-40 327 IAC 8-2-41 327 IAC 8-2-42 327 IAC 8-2-43 327 IAC 8-2-44	3	327 IAC 8-2-37 327 IAC 8-2-38 327 IAC 8-2-39 327 IAC 8-2-45
D. Synthetic Organic Chemicals (SOCs)				
1. 2,4-D	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
2. 2,4,5-TP (silvex)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
3. Alachlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
4. Atrazine	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1

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5. Benzo(a)pyrene (PAHs)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
6. Carbofuran	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
7. Chlordane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
8. Dalapon	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
9. Di (2-ethylhexyl) adipate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
10. Di (2-ethylhexyl) phthalate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
11. Dibromochloropropane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
12. Dinoseb	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
13. Dioxin (2,3,7,8-TCDD)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
14. Diquat	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
15. Endothall	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
16. Endrin	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
17. Ethylene dibromide	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
18. Glyphosate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
19. Heptachlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
20. Heptachlor epoxide	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
21. Hexachlorobenzene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
22. Hexachlorocyclopentadiene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
23. Lindane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
24. Methoxychlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
25. Oxamyl (vydate)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
26. Pentachlorophenol	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
27. Picloram	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
28. Polychlorinated biphenyls (PCBs)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
29. Simazine	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
30. Toxaphene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
E. Volatile Organic Chemicals (VOCs)				
1. Benzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
2. Carbon tetrachloride	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
3. Chlorobenzene (monochlorobenzene)	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
4. o-Dichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
5. p-Dichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
6. 1,2-Dichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
7. 1,1-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
8. cis-1,2-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
9. trans-1,2-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
10. Dichloromethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
11. 1,2-Dichloropropane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
12. Ethylbenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
13. Styrene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
14. Tetrachloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
15. Toluene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
16. 1,2,4-Trichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
17. 1,1,1-Trichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
18. 1,1,2-Trichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
19. Trichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
20. Vinyl chloride	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
21. Xylenes (total)	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
F. Radioactive Contaminants				

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1. Beta/photon emitters	2	327 IAC 8-2-10	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(b)
2. Alpha emitters	2	327 IAC 8-2-9(2)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
3. Combined radium (226 and 228)	2	327 IAC 8-2-9(1)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
4. Uranium	2	327 IAC 8-2-9(3)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
G. Disinfection Byproducts (DBPs). Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of DBPs in drinking water.				
1. Total trihalomethanes (TTHMs)	2	327 IAC 8-2-5(a) and 327 IAC 8-2-5(c)	3	327 IAC 8-2-5.3
2. Haloacetic acids (HAA5)	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
3. Bromate	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
4. Chlorite	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
5. Chlorine (MRDL)	2	327 IAC 8-2.5-3(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(c)
6. Chloramine (MRDL)	2	327 IAC 8-2.5-3(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(c)
7. Chlorine dioxide (MRDL), where any 2 consecutive daily samples at entrance to distribution system only are above MRDL	2	327 IAC 8-2.5-3(a)	2, 3	327 IAC 8-2.5-6(a), 327 IAC 8-2.5-6(c), and 327 IAC 8-2.5-7(c)(2)
8. Chlorine dioxide (MRDL), where samples in distribution system the next day are also above MRDL	1	327 IAC 8-2.5-3(a)	1	327 IAC 8-2.5-6(a), 327 IAC 8-2.5-6(c), and 327 IAC 8-2.5-7(c)(2)
9. Control of DBP precursors - TOC (TT)	2	327 IAC 8-2.5-9(a) and 327 IAC 8-2.5-9(b)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(d)
10. Bench marking and disinfection profiling	N/A	N/A	3	327 IAC 8-2.6-2 327 IAC 8-2.6-2.1
11. Development of monitoring plan	N/A	N/A	3	327 IAC 8-2.5-6(f)
H. Other Treatment Techniques				
1. Acrylamide (TT)	2	327 IAC 8-2-35	N/A	N/A
2. Epichlorohydrin (TT)	2	327 IAC 8-2-35	N/A	N/A
II. Unregulated Contaminant Monitoring:				
A. Nickel	N/A	N/A	3	327 IAC 8-2-4.1(e)
III. Other Situations Requiring Public Notification:				
A. Fluoride secondary maximum contaminant level (SMCL) exceedance	3	40 CFR § 143.3*	N/A	N/A
B. Exceedance of nitrate MCL for noncommunity systems, as allowed by the commissioner	1	327 IAC 8-2-4(b)	N/A	N/A
C. Waterborne disease outbreak	1	327 IAC 8-2-1	N/A	N/A
D. Other waterborne emergency	1	N/A	N/A	N/A
E. Other situations as determined by the commissioner	1, 2, 3	N/A	N/A	N/A

Key:

MCL = Maximum contaminant level.

MRDL = Maximum residual disinfectant level.

TT = Treatment technique.

Violations of drinking water regulations include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

(b) Drinking water violations and other situations that require public notice according to this rule are contained in the following provisions:

(1) Violations and other situations not listed in table 16 in subsection (a), such as reporting violations and failure to prepare Consumer Confidence Report do not require notice, unless otherwise determined by the commissioner. The commissioner may, at their option, also require a more stringent public notice tier such as Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3 for specific violations and situations listed in table 16 in subsection (a).

(2) Failure to test for fecal coliform or E. coli is a Tier 1 violation if testing is not done after any repeat sample tests positive for coliform. All other total coliform monitoring and testing procedure violations are Tier 3.

(3) Systems with treatment technique violations involving a single exceedance of maximum turbidity limit under the:

(A) surface water treatment rule (SWTR);

(B) **interim enhanced surface water treatment rule (IESWTR); or**

(C) **long term 1 enhanced surface water treatment rule (LT1ESWTR);**

are required to initiate consultation with the commissioner within twenty-four (24) hours after learning of the violation. Based on this consultation, the commissioner may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the commissioner in the twenty-four (24) hour period, the violation is automatically elevated to Tier 1.

(4) Failure to take a confirmation sample within twenty-four (24) hours for nitrate or nitrite after an initial sample exceeds the MCL is a Tier 1 Violation. Other monitoring violations for nitrate are Tier 3.

(5) Other waterborne emergencies require a Tier 1 public notice under section 8(a) of this rule for situations that do not

meet the definition of a waterborne disease outbreak given in 327 IAC 8-2-1, but that still have the potential to have serious adverse effects on health as a result of short term exposure. These **waterborne emergencies** could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as:

(A) failures or significant interruption in water treatment processes;

(B) natural disasters that disrupt the water supply or distribution system;

(C) chemical spills; or

(D) unexpected loading of possible pathogens into the source water.

(6) The commissioner may place other situations in any tier believed appropriate, based on threat to public health.

*40 CFR 143.3 is incorporated by reference and is available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2.1-16; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1115; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254; filed May 1, 2003, 12:00 p.m.: 26 IR 2829*)

SECTION 26. 327 IAC 8-2.1-17 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-17 Drinking water violations; standard health effects language for public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 17. A public water system must comply with the standard health effects language for public notification contained in the following table:

Table 17. Standard Health Effects Language for Public Notification			
Contaminant	MCLG mg/l	MCL mg/l	Standard Health Effects Language for Public Notification
Drinking Water Regulations:			
A. Microbiological Contaminants, Surface Water Treatment Rule, and Interim Enhanced Surface Water Treatment Rule, and Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR)			
1a. Total coliform	0	See footnote ¹	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed, and this was a warning of potential problems.

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1b. Fecal coliform/E. coli	0	0	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
2a. Turbidity (MCL) ²	None	1 NTU ² /5 NTU	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms, such as nausea, cramps, diarrhea, and associated headaches.
2b. Turbidity (SWTR TT, and IESWTR TT, and LT1ESWTR TT) ²	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms, such as nausea, cramps, diarrhea, and associated headaches.
2c. Giardia lamblia 2d. Viruses 2e. Heterotrophic plate count (HPC) bacteria ³ 2f. Legionella 2g. Cryptosporidium	0	TT ⁴	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms, such as nausea, cramps, diarrhea, and associated headaches.
B. Inorganic Chemicals (IOCs)			
3. Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
4. Arsenic ⁵	None 0	0.05 0.10	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system and may have an increased risk of getting cancer.
5. Asbestos (>10 µm)	7 MFL	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
6. Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
7. Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
8. Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
9. Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
10. Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
11. Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine (9) years old of age. Mottling, also known as dental fluorosis, may include brown staining or pitting of the teeth, or both, and occurs only in developing teeth before they erupt from the gums.

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12. Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
13. Nitrate	10	10	Infants below the age of six (6) months of age who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
14. Nitrite	1	1	Infants below the age of six (6) months of age who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
15. Total nitrate and nitrite	10	10	Infants below the age of six (6) months of age who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
16. Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
17. Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
C. Lead and Copper Rule			
18. Lead	0	TT	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
19. Copper	1.3	TT	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
D. Synthetic Organic Chemicals (SOCs)			
20. 2,4-D	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
21. 2,4,5-TP (silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
22. Alachlor	0	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
23. Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
24. Benzo(a)pyrene (PAHs)	0	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
25. Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood or nervous or reproductive systems.

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26. Chlordane	0	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system and may have an increased risk of getting cancer.
27. Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
28. Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
29. Di (2-ethylhexyl) phthalate	0	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
30. Dibromochloropropane (DBCP)	0	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
31. Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
32. Dioxin (2,3,7,8-TCDD)	0	3×10^{-8}	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
33. Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
34. Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
35. Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
36. Ethylene dibromide	0	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys and may have an increased risk of getting cancer.
37. Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
38. Heptachlor	0	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
39. Heptachlor epoxide	0	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
40. Hexachlorobenzene	0	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
41. Hexachlorocyclopentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
42. Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
43. Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
44. Oxamyl (vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

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45. Pentachlorophenol	0	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys and may have an increased risk of getting cancer.
46. Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
47. Polychlorinated biphenyls (PCBs)	0	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties and may have an increased risk of getting cancer.
48. Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
49. Toxaphene	0	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid and may have an increased risk of getting cancer.
E. Volatile Organic Chemicals (VOCs)			
50. Benzene	0	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets and may have an increased risk of getting cancer.
51. Carbon tetrachloride	0	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
52. Chlorobenzene (monochlorobenzene)	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
53. o-Dichlorobenzene	0.6	0.6	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
54. p-Dichlorobenzene	0.075	0.075	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen or changes in their blood.
55. 1,2-Dichloroethane	0	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
56. 1,1-Dichloroethylene	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
57. cis-1,2-Dichloroethylene	0.07	0.07	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
58. trans-1,2-Dichloroethylene	0.1	0.1	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
59. Dichloromethane	0	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
60. 1,2-Dichloropropane	0	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
61. Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
62. Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
63. Tetrachloroethylene	0	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.

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64. Toluene	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
65. 1,2,4-Trichlorobenzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
66. 1,1,1-Trichloroethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
67. 1,1,2-Trichloroethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
68. Trichloroethylene	0	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
69. Vinyl chloride	0	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
70. Xylenes (total)	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
F. Radioactive Contaminants			
71. Beta/photon emitters	0	4 mrem/yr	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta particle and photon emitters radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.
72. Alpha emitters	0	15 pCi/l	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
73. Combined radium (226 and 228)	0	5 pCi/l	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
74. Uranium	Zero	30 µg/l	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
G. Disinfection Byproducts (DBPs): Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water.			
74: 75. Total trihalomethanes (TTHMs)	N/A	0.10 0.080 ⁶	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system and may have an increased risk of getting cancer.
75: 76. Haloacetic acids (HAA)	N/A	0.060 ⁷	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
76: 77. Bromate	0	0.010	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
77: 78. Chlorite	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
78: 79. Chlorine	4 MRDLG	4.0 MRDL	Some people who use drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

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79 80. Chloramines	4 MRDLG	4.0 MRDL	Some people who use drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
80a 81a. Chlorine dioxide, where any 2 two consecutive daily samples taken at the entrance to the distribution system are above the MRDL	0.8 MRDLG	0.8 MRDL	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system that delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
80b 81b. Chlorine dioxide, where one or more distribution system samples are above the MRDL	0.8 MRDLG	0.8 MRDL	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which that delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
81 82. Control of DBP precursors (TOC)	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney kidney problems, or nervous system effects and may lead to an increased risk of getting cancer.
H. Other Treatment Techniques			
82 83. Acrylamide	0	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood and may have an increased risk of getting cancer.
83 84. Epichlorohydrin	0	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems and may have an increased risk of getting cancer.

Key:

MCLG - Maximum contaminant level goal.

MCL - Maximum contaminant level.

MRDL = Maximum residual disinfectant level.

MRDLG = Maximum residual disinfectant level goal.

NTU - Nephelometric turbidity unit.

TT - Treatment technique.

MFL - Millions of fiber per liter.

Action Level (Lead) = 0.015 mg/L.

Action Level (Copper) = 1.3 mg/L.

mrem - millirems per year.

ppq - picocuries per liter.

(+) ¹For water systems analyzing at least forty (40) samples per month, no more than five percent (5.0%) of the monthly samples may

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be positive for total coliforms. For systems analyzing fewer than forty (40) samples per month, no more than one (1) sample per month may be positive for total coliforms.

²There are various regulations that set turbidity standards for different types of systems, including the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule, and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule. The following apply:

- (1) Systems subject to 327 IAC 8-2-8.5 through 327 IAC 8-2-8.8 (also known as the Surface Water Treatment Rule (SWTR)), for both filtered and unfiltered systems, may not exceed five (5) NTU. In addition, in filtered systems, ninety-five percent (95%) of samples each month must not exceed five-tenths (0.5) NTU in systems using conventional or direct filtration and must not exceed one (1) NTU in systems using slow sand or diatomaceous earth filtration or other filtration technologies approved by the commissioner.
 - (2) For systems subject to 327 IAC 8-2.6-1, 327 IAC 8-2.6-2, 327 IAC 8-2.6-3, 327 IAC 8-2.6-4, and 327 IAC 8-2.6-5 (also known as the Interim Enhanced Surface Water Treatment Rule (IESWTR)), for systems serving at least ten thousand (10,000) individuals using surface water or ground water under the direct influence of surface water that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter effluent may not exceed three-tenths (0.3) NTU in at least ninety-five percent (95%) of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed one (1) NTU at any time.
 - (3) Systems subject to 327 IAC 8-2.6-1, 327 IAC 8-2.6-2, 327 IAC 8-2.6-3, 327 IAC 8-2.6-4, and 327 IAC 8-2.6-5, the IESWTR, using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the commissioner.
 - (4) For systems subject to 327 IAC 8-2.6-1 through 327 IAC 8-2.6-5 (also known as the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR)), for systems serving fewer than ten thousand (10,000) individuals using surface water or ground water under the direct influence of surface water that use conventional filtration or direct filtration, after January 1, 2005, the turbidity level of a system's combined filter effluent may not exceed three-tenths (0.3) NTU in at least ninety-five percent (95%) of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed one (1) NTU at any time.
 - (5) Systems subject to 327 IAC 8-2.6-1 through 327 IAC 8-2.6-5, the LT1ESWTR, using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the commissioner.
- (2) ³The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.
- (3) ⁴SWTR, IESWTR, and LT1ESWTR treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.
- (4) The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.
- ⁵The arsenic MCL and MCLG are effective January 1, 2006. Until then, the MCL is 0.05 mg/l and there is no MCLG.
- (5) ⁶The MCL for total trihalomethanes TTHM is the sum of the concentrations of the individual trihalomethanes.
- ⁷The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.
(Water Pollution Control Board; 327 IAC 8-2.1-17; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1118; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254; filed May 1, 2003, 12:00 p.m.: 26 IR 2833)

SECTION 27. 327 IAC 8-2.6-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-1 General requirements; enhanced filtration and disinfection

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 1. (a) Upon the effective date of this rule, unless otherwise specified in this section, all Subpart H systems serving a population of at least ten thousand (10,000) individuals and, beginning January 1, 2005, systems serving a population of fewer than ten thousand (10,000) individuals shall establish treatment technique requirements in lieu instead of maximum contaminant levels MCLs for the following contaminants:

- (1) Giardia lamblia.
- (2) Viruses.
- (3) Heterotrophic plate count bacteria.
- (4) Legionella.
- (5) Cryptosporidium.
- (6) Turbidity.

The systems shall also provide treatment of their source water that complies with these treatment technique requirements in addition to those identified in 327 IAC 8-2-8.5.

(b) The treatment technique requirements consist of installing and properly operating water treatment processes that reliably achieve the following:

- (1) At least ninety-nine percent (99%) (2-log) removal of Cryptosporidium between a point where the raw water is not

subject to recontamination by surface water run-off and a point downstream before or at the first customer for filtered systems or Cryptosporidium control under the water shed control plan for unfiltered systems.

(2) Compliance with the profiling and benchmark requirements under section 2 of this rule **for systems serving a population of at least ten thousand (10,000) individuals and, beginning January 1, 2005, section 2.1 of this rule for systems serving a population of fewer than ten thousand (10,000) individuals.**

(c) A public water system subject to ~~the requirements of this section is considered to be in compliance with the requirements of subsections (a) and (b) if it meets the:~~

- (1) disinfection requirements in 327 IAC 8-2-8.6 and section 2 of this rule; or
- (2) applicable filtration requirements in either 327 IAC 8-2-8.5 or section 3 of this rule and the disinfection requirements in 327 IAC 8-2-8.6 and section 2 of this rule;

for systems serving a population of at least ten thousand (10,000) individuals and, beginning January 1, 2005, section 2.1 of this rule for systems serving a population of fewer than ten thousand (10,000) individuals.

(d) Subpart H systems ~~serving a population of greater than ten thousand (10,000)~~ are not permitted to begin construction of uncovered finished water storage facilities after the effective date of this rule.

(e) **Subpart H systems that did not conduct optional monitoring under section 2 of this rule when such monitoring was required because they served fewer than ten thousand (10,000) individuals but serve more than ten thousand (10,000) individuals prior to January 1, 2005, must comply with this section and sections 3 through 5 of this rule. These systems must also consult with the commissioner to establish a disinfection benchmark. A system that decides to make a significant change to its disinfection practice, as described in section 2(c)(1)(A) through 2(c)(1)(D) of this rule must consult with the commissioner before making such change.** (*Water Pollution Control Board; 327 IAC 8-2.6-1; filed May 1, 2003, 12:00 p.m.: 26 IR 2854*)

SECTION 28. 327 IAC 8-2.6-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-2 Disinfection profiling and benchmarking for systems serving a population of at least 10,000 individuals

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 2. (a) A public water system subject to ~~the requirements of this section~~ will determine its TTHM annual average using the procedure in subdivision (1) and its HAA5 annual average using the procedure in subdivision (2). The annual average is the

arithmetic average of the quarterly averages of four (4) consecutive quarters of monitoring. A public water system subject to ~~the requirements of this section~~ shall meet the following monitoring requirements to determine its TTHM annual average and its HAA5 annual average:

(1) The TTHM annual average must be the annual average during the same period as is used for the HAA5 annual average. Those Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that:

- (A) collected data under 40 CFR 141* must use the results of the samples collected during the last four (4) quarters of required monitoring under 40 CFR 141.142*;
- (B) use grandfathered HAA5 occurrence data that meet the provisions of subdivision (2)(B) must use the TTHM data collected at the same time under 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3; and
- (C) use HAA5 occurrence data that meet the provisions of subdivision (2)(C)(i) must use the TTHM data collected at the same time under 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3.

(2) The HAA5 annual average must be the annual average during the same period as is used for the TTHM annual average. Those Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that:

- (A) collected data under 40 CFR 141* must use the results of the samples collected during the last four (4) quarters of required monitoring under 40 CFR 141.142*;
- (B) have collected four (4) quarters of HAA5 occurrence data that meets the routine monitoring sample number and location requirements for TTHM in 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3 and handling and analytical method requirements of 40 CFR 141.142(b)(1)* may use those data to determine whether ~~the requirements of this section apply;~~ **applies;** and
- (C) have not collected four (4) quarters of HAA5 occurrence data that meets the provisions of ~~either~~ clause (A) or (B) by March 16, 1999, must either:

- (i) conduct monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in 327 IAC 8-2-5(a), 327 IAC 8-2-5.3, and handling and analytical method requirements of 40 CFR 141.142(b)(1)* to determine the HAA5 annual average and whether ~~the requirements of subsection (b) apply;~~ **applies.** This monitoring must be completed so that the applicability determination can be made no later than March 31, 2000; or
- (ii) comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with subsection (b).

(3) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals may request that the commissioner approve a more representative annual data set than the data set determined under subdivision (1) or (2) for the purpose of determining applicability of ~~the requirements of this section.~~

(4) The commissioner may require that a system use a more representative annual data set than the data set determined under subdivision (1) or (2) for the purpose of determining applicability of ~~the requirements of~~ this section.

(5) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall submit data to the commissioner based on the following schedules:

(A) Those Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that collected TTHM and HAA5 data under 40 CFR 141*, as required by subdivisions (1)(A) and (2)(A), shall submit the results of the samples collected during the last twelve (12) months of monitoring required under 40 CFR 141.142* not later than December 31, 1999.

(B) Those Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that have collected four (4) consecutive quarters of HAA5 occurrence data that meets the routine monitoring sample number and location for TTHM in 327 IAC 8-2-5(a), 327 IAC 8-2-5.3, and handling and analytical method requirements of 40 CFR 141.142(b)(1)*, as allowed by subdivisions (1)(B) and (2)(B), must submit those data to the commissioner not later than April 15, 1999. Until the commissioner has approved the data, the system shall conduct monitoring for HAA5 using the monitoring requirements specified under subdivision (2)(C).

(C) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that conduct monitoring for HAA5 using the monitoring requirements specified by subdivision (2)(C)(i) shall submit TTHM and HAA5 data not later than March 31, 2000.

(D) Those systems that elect to comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with this section, as allowed under subdivision (2)(C)(ii), shall notify the commissioner in writing of their election not later than December 31, 1999.

(E) If the system elects to represent that the commissioner approve a more representative annual data set than the data set determined under subdivision (2)(A), the system must submit this request in writing not later than December 31, 1999.

(6) Any Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals having either a TTHM annual average greater than or equal to sixty-four thousandths (0.064) milligram per liter or an HAA5 annual average greater than or equal to forty-eight thousandths (0.048) milligram per liter during the period identified in subdivisions (1) and (2) shall comply with subsection (b).

(b) Disinfection profiling requirements are as follows:

- (1) Any Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that meets the criteria in subsection (a)(6) shall develop a disinfection profile of its disinfection practice for a period of up to three (3) years.
- (2) Not later than April 1, 2000, Subpart H systems serving a

population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall monitor daily for a period of twelve (12) consecutive calendar months to determine the total logs of inactivation for each day of operation based on the CT99.9 values in Tables 1.1 through 1.6, 2.1, and 3.1 of 40 CFR 141.74(b)*, as appropriate, through the entire treatment plant. At a minimum, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals with a single or multiple point of disinfectant application prior to entrance to the distribution system shall conduct the monitoring in clauses (A) through (D) for each disinfection segment. The system shall monitor the parameters necessary to determine the total ~~inactivation~~ **inactivation** ratio using analytical methods in 327 IAC 8-2-8.7 as follows:

(A) The temperature of the disinfection water shall be measured one (1) time per day at each residual disinfectant concentration sampling point during peak hourly flow.

(B) If the system uses chlorine, the pH of the disinfected water shall be measured one (1) time per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

(C) The disinfectant contact time (T) shall be determined for each day during peak hourly flow.

(D) The residual disinfectant concentration (C) of the water before or at the first customer and prior to each additional point of disinfection shall be measured each day during peak hourly flow.

(3) ~~In lieu~~ **Instead** of the monitoring conducted under subdivision (2) to develop the disinfection profile, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals may elect to meet either of the following requirements:

(A) Not later than March 31, 2000, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that ~~has~~ **have** three (3) years of existing operational data may submit those data, a profile generated using those data, and a request that the commissioner approve use of those data ~~in lieu~~ **instead** of monitoring under subdivision (2). The commissioner shall determine whether these operational data are substantially equivalent to data collected under subdivision (2) and whether these data are representative of Giardia lamblia inactivation through the entire treatment plant and not just of certain treatment segments. Until the commissioner approves this request, the system is required to conduct monitoring under subdivision (2).

(B) In addition to the disinfection profile generated under subdivision (2), Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that ~~has~~ **have** existing operational data may use those data to develop a disinfection profile for additional years. Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals may use these additional yearly disinfection profiles to develop a benchmark under subsection (c). The commissioner shall determine whether

these operational data are substantially equivalent to data collected under subdivision (2). These data must also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(4) Subpart H systems serving a population of **greater than at least** ten thousand (10,000) individuals shall calculate the total inactivation ratio as follows:

(A) If the system uses only one (1) point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment by using either of the following methods:

- (i) Determine one (1) inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow.
- (ii) Determine successive $CT_{calc}/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine ($\Sigma (CT_{calc}/CT_{99.9})$).

(B) Subpart H systems serving a population of **greater than at least** ten thousand (10,000) individuals that use more than one (1) point of disinfectant application before the first customer shall determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CT_{calc}/CT_{99.9}$) value of each segment and ($\Sigma (CT_{calc}/CT_{99.9})$) shall be calculated using the method in clause (A).

(C) Subpart H systems serving a population of **greater than at least** ten thousand (10,000) individuals shall determine the total logs of inactivation by multiplying the value calculated in clause (A) or (B) by three and zero-tenths (3.0).

(5) Subpart H systems serving a population of **greater than at least** ten thousand (10,000) individuals that use either chloramines or ozone for primary disinfection shall also calculate the logs of inactivation for viruses using a method approved by the commissioner.

(6) Subpart H systems serving a population of **greater than at least** ten thousand (10,000) individuals shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the commissioner for review as part of sanitary surveys conducted by the commissioner.

(c) Disinfection benchmarking requirements are as follows:

(1) A Subpart H system serving a population of **greater than at least** ten thousand (10,000) individuals required to develop a disinfection profile under subsections (a) and (b) that decides to make a significant change to its disinfection practice shall consult with the commissioner **prior to before** making ~~such the~~ change. As used in this subdivision, "significant changes" means **changes to** the following:

- (A) ~~Changes to the~~ Point of disinfection.
- (B) ~~Changes to the~~ Disinfectants used in the treatment plant.

(C) ~~Changes to the~~ Disinfection process.

(D) Any other modification identified by the commissioner.

(2) A Subpart H system serving a population of **greater than at least** ten thousand (10,000) individuals that is modifying its disinfection practice shall calculate its disinfection benchmark using the following procedures:

(A) Subpart H systems serving a population of **greater than at least** ten thousand (10,000) individuals shall determine the lowest average monthly Giardia lamblia inactivation for each year of profiling data collected and calculated under subsection (b). The system shall determine the average Giardia lamblia inactivation for each calendar month for each year of profiling data by dividing the sum of daily Giardia lamblia inactivation by the number of values calculated for that month.

(B) The disinfection benchmark is the lowest monthly average value (for Subpart H systems serving a population of **greater than at least** ten thousand (10,000) with one (1) year of profiling data) or average of lowest monthly average values (for Subpart H systems serving a population of **greater than at least** ten thousand (10,000) individuals with more than one (1) year of profiling data) of the monthly logs of Giardia lamblia inactivation for each year of profiling data.

(C) Subpart H systems serving a population of **greater than at least** ten thousand (10,000) individuals that use either chloramines or ozone for primary disinfection shall also calculate the disinfection benchmark for viruses using a method approved by the commissioner.

(D) The system shall submit the following information to the commissioner as part of its consultation process:

- (i) A description of the proposed change in disinfection practice.
- (ii) The disinfection profile for Giardia lamblia (and, if necessary, viruses) under subsection (b) and benchmark as required by this subsection.
- (iii) An analysis of how the proposed change will affect the current levels of disinfection.

*40 CFR 141, 40 CFR 141.142, 40 CFR 141.142(b)(1), and 40 CFR 141.74(b) are incorporated by reference and are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2.6-2; filed May 1, 2003, 12:00 p.m.; 26 IR 2854*)

SECTION 29. 327 IAC 8-2.6-2.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.6-2.1 Disinfection profiling and benchmarking for systems serving a population of fewer than 10,000 individuals beginning January 1, 2005

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-6
Affected: IC 13-14-9

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Sec. 2.1. (a) A disinfection profile is a graphical representation of a system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. Beginning January 1, 2005, Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must develop a disinfection profile unless the commissioner determines that the system's profile is unnecessary. The commissioner may approve the use of a more representative data set for disinfection profiling than the data set required under subsection (c).

(b) The commissioner may only determine that a system's profile is unnecessary if a system's TTHM and HAA5 levels are below sixty-four thousandths (0.064) mg/l and forty-eight thousandths (0.048) mg/l, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature and at the point of maximum residence time in a system's distribution system.

(c) Disinfection profiling requirements are as follows:

(1) A disinfection profile consists of three (3) steps:

(A) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must collect data for several parameters from the plant over the course of twelve (12) months according to subdivision (2). If the system serves more than five hundred (500) and fewer than ten thousand (10,000) individuals, the system must begin to collect data no later than July 1, 2003. If the

system serves fewer than five hundred (500) individuals, the system must begin to collect data no later than January 1, 2004.

(B) The system must use this data to calculate weekly log inactivation according subdivisions (3) and (4).

(C) The system must use these weekly log inactivations to develop a disinfection profile as specified in subdivisions (5) through (8).

(2) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must monitor the following parameters to determine the total log inactivation using the analytical methods in 327 IAC 8-2-8.7, once per week on the same calendar day, over twelve (12) consecutive months:

(A) The temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow.

(B) If the system uses chlorine, the pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow.

(C) The disinfectant contact time or times (T) during peak hourly flow.

(D) The residual disinfectant concentration or concentrations (C) of the water before or at the first customer and prior to each additional point of disinfection during peak hourly flow.

(3) Calculate the total inactivation ratio using the following table and multiply the value by three and zero-tenths (3.0) to determine log inactivation of *Giardia lamblia*:

For systems that ***	The system must determine ***
(A) Use only one (1) point of disinfectant application	(i) One (1) inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow; or (ii) Successive $CT_{calc}/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, systems must calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine ($3CT_{calc}/CT_{99.9}$).
(B) Use more than one (1) point of disinfectant application before the first customer	The ($CT_{calc}/CT_{99.9}$) value of each disinfection segment immediately prior to the next point of disinfectant application, or, for the final segment, before or at the first customer during peak hourly flow using the procedure specified in (A)(ii) of this table.

(4) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals that use chloramines, ozone, or chlorine dioxide for primary disinfection must also calculate the logs of inactivation for viruses and develop an additional disinfection profile for viruses using methods approved by the commissioner.

(5) Develop a disinfection profile by plotting each log inactivation as a data point. Systems should have fifty-two (52) measurements to plot (one (1) for every week of the year).

(6) Subpart H systems serving a population of fewer than

ten thousand (10,000) individuals and the commissioner should evaluate the disinfection profile to examine microbial inactivation variations over the course of the year by looking at all fifty-two (52) measurements.

(7) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must retain the disinfection profile data in graphic form, such as a spreadsheet, that must be available for review by the commissioner as part of a sanitary survey.

(8) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must use this data to

calculate a benchmark if they are considering changes to disinfection practices.

(d) Disinfection benchmark requirements are as follows:

(1) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals that are required to develop a disinfection profile under subsections (a) through (c) must develop a disinfection benchmark if a significant change is made to the system's disinfection practices.

(2) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must consult with the commissioner for approval before implementing a significant disinfection practice change. Significant changes to disinfection practices include changes to the following:

(A) Point of disinfection.

(B) Disinfectant or disinfectants used in the treatment plant.

(C) Disinfection process.

(D) Any other modification identified by the commissioner.

(3) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals that are considering a significant change to their disinfection practices must calculate a disinfection benchmark or benchmarks according to subdivisions (4) and (5) and provide the benchmark or benchmarks to the commissioner. Subpart H systems serving a population of fewer than ten thousand (10,000) individuals may make a significant disinfection practice change only after consulting with the commissioner for approval. Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must submit the following information to the commissioner as part of the consultation and approval process:

(A) A description of the proposed change.

(B) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and disinfection benchmark.

(C) An analysis of how the proposed change will affect the current levels of disinfection.

(D) Any additional information requested by the commissioner.

(4) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals that are making a significant change to their disinfection practices must calculate a disinfection benchmark using the following procedure:

(A) Using the data collected by the system to develop the disinfection profile, determine the average *Giardia lamblia* inactivation for each calendar month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.

(B) Determine the lowest monthly average value out of the twelve (12) values. This value becomes the disinfection benchmark.

(5) Subpart H systems serving a population of fewer than

ten thousand (10,000) individuals and using chloramines, ozone, or chlorine dioxide for primary disinfection must calculate the disinfection benchmark from the data collected for viruses by the system to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated under subdivision (4). This viral benchmark must be calculated in the same manner used to calculate the *Giardia lamblia* disinfection benchmark in subdivision (4).

(Water Pollution Control Board; 327 IAC 8-2.6-2.1)

SECTION 30. 327 IAC 8-2.6-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-3 Enhanced filtration

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 3. By December 31, 2001, Subpart H systems serving a population of ~~greater than at least~~ ten thousand (10,000) individuals **and, beginning January 1, 2005, Subpart H systems serving a population of fewer than ten thousand (10,000) individuals** shall provide treatment consisting of both disinfection, as specified in 327 IAC 8-2-8.6, and filtration treatment that complies with the following:

(1) Requirements for systems using conventional filtration or direct filtration are as follows:

(A) For Subpart H systems ~~serving a population of greater than ten thousand (10,000) individuals~~ using conventional filtration or direct filtration, the turbidity level of representative samples of the system's filtered water must be less than or equal to three-tenths (0.3) nephelometric turbidity unit in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in 327 IAC 8-2-8.7 and 327 IAC 8-2-8.8.

(B) The turbidity level of representative samples of the system's filtered water must at no time exceed one (1) nephelometric turbidity unit, measured as specified in 327 IAC 8-2-8.7 and 327 IAC 8-2-8.8.

(C) A system that uses lime softening may acidify representative samples prior to analysis using a protocol approved by the commissioner.

(2) A Subpart H system ~~serving a population greater than ten thousand (10,000)~~ may use filtration technologies other than:

(A) conventional filtration treatment;

(B) direct filtration;

(C) slow sand filtration; or

(D) diatomaceous earth filtration;

if it demonstrates to the commissioner, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of 327 IAC 8-2-8.6, consistently achieves ninety-nine and nine-tenths percent (99.9%) removal or inactivation of *Giardia lamblia* cysts and ninety-nine and ninety-nine hundredths percent (99.99%) removal or inactivation of viruses, and ninety-nine percent (99%) removal of

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Cryptosporidium oocysts, and the commissioner approves the use of the filtration technology.

(3) For each approval under subdivision (2), the commissioner will set turbidity performance requirements that the system must meet at least ninety-five percent (95%) of the time (**not to exceed 1 NTU**) and that the system may not exceed at any time at a level that consistently achieves ninety-nine and nine-tenths percent (99.9%) removal or inactivation of Giardia lamblia cysts, ninety-nine and ninety-nine hundredths percent (99.99%) removal or inactivation of viruses, and ninety-nine percent (99%) removal of Cryptosporidium oocysts (**not to exceed 5 NTU**).

(Water Pollution Control Board; 327 IAC 8-2.6-3; filed May 1, 2003, 12:00 p.m.: 26 IR 2857)

SECTION 31. 327 IAC 8-2.6-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-4 Filtration sampling requirements

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 4. (a) In addition to monitoring required by 327 IAC 8-2-8.7, a Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals **and, beginning January 1, 2005, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals** that provides conventional filtration treatment or direct filtration shall comply with the following:

- (1) Conduct continuous monitoring of turbidity for each individual filter using an approved method in 327 IAC 8-2-8.7.
- (2) Calibrate turbidimeters using the procedure specified by the manufacturer.
- (3) Record the results of individual filter monitoring every fifteen (15) minutes.
- (4) **Monthly reporting must be completed and records must be maintained according to section 5 of this rule.**

(b) If there is a failure in the continuous turbidity monitoring equipment, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals must conduct grab sampling every four (4) hours ~~in lieu~~ **instead** of continuous monitoring, but for no more than five (5) working days following the failure of the equipment. **Beginning January 1, 2005, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals must conduct grab sampling every four (4) hours instead of continuous monitoring until the turbidimeter is back in operation. The system has fourteen (14) days to resume continuous monitoring before a violation is incurred.**

(c) Beginning January 1, 2005, if a system serving a population of fewer than ten thousand (10,000) individuals only consists of two (2) or fewer filters, the system may conduct continuous monitoring of combined filter effluent

turbidity instead of individual filter effluent turbidity monitoring. Continuous monitoring must meet the same requirements set forth in subsections (a) and (b). (Water Pollution Control Board; 327 IAC 8-2.6-4; filed May 1, 2003, 12:00 p.m.: 26 IR 2857)

SECTION 32. 327 IAC 8-2.6-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-5 Enhanced filtration and disinfection reporting and record keeping requirements

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 5. Beginning January 1, 2002, a Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals **and, beginning January 1, 2005, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals** that is subject to the requirements of section 3 of this rule and provides conventional filtration treatment or direct filtration shall meet the following requirements in addition to the reporting and record keeping requirements in 327 IAC 8-2-14:

(1) Turbidity measurements as required by section 3 of this rule shall be reported within ten (10) days after the end of each month the system serves water to the public. Information that ~~shall~~ **must** be reported includes the following:

- (A) The total number of filtered water turbidity measurements taken during the month.
- (B) The number and percentage of filtered water turbidity measurements taken during the month ~~which that~~ are less than or equal to the turbidity limits specified in section 3 of this rule.
- (C) The date and value of any turbidity measurements taken during the month that exceed:
 - (i) one and zero-tenths (1.0) nephelometric turbidity unit for systems using conventional filtration treatment or direct filtration; or
 - (ii) the maximum level set by the commissioner under section 3 of this rule. This reporting requirement is ~~in lieu~~ **instead** of the reporting specified in 327 IAC 8-2-14(b).

(2) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall maintain the results of individual filter monitoring taken under section 4 of this rule for at least three (3) years. These systems shall report that they have conducted individual filter turbidity monitoring under section 3 of this rule within ten (10) days after the end of each month they serve water to the public if measurements demonstrate one (1) or more of the following conditions:

- (A) For any individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) nephelometric turbidity unit in two (2) consecutive measurements taken fifteen (15) minutes apart, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall report the:

- (i) filter number; ~~the~~
- (ii) turbidity measurement; and ~~the~~
- (iii) date ~~on which~~ **when** the exceedance occurred.

In addition, the system shall either produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced or report the obvious reason for the exceedance.

(B) For any individual filter that has a measured turbidity level of greater than five-tenths (0.5) in two (2) consecutive measurements taken fifteen (15) minutes apart at the end of the first four (4) hours of continuous filter operation after the filter has been backwashed or otherwise taken off-line, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall report the:

- (i) filter number; ~~the~~
- (ii) turbidity **measurement**; and ~~the~~
- (iii) date ~~on which~~ **when** the exceedance occurred.

In addition, the system shall either produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced or report the obvious reason for the exceedance.

(C) For any individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) nephelometric turbidity unit in two (2) consecutive measurements taken fifteen (15) minutes apart at any time in each of three (3) consecutive months, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) shall report the filter number, the turbidity measurement, and the date ~~on which~~ **when** the exceedance occurred. In addition, the system shall conduct a self-assessment of the filter within fourteen (14) days of the exceedance and report that the self-assessment was conducted. The self-assessment shall consist of at least the following components:

- (i) Assessment of filter performance.
- (ii) Development of a filter profile.
- (iii) Identification and prioritization of factors limiting filter performance.
- (iv) Assessment of the applicability of corrections.
- (v) Preparation of a filter self-assessment report.

(D) For any individual filter that has a measured turbidity level of greater than two and zero-tenths (2.0) nephelometric turbidity units in two (2) consecutive measurements taken fifteen (15) minutes apart at any time in each of two (2) consecutive months, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall report the:

- (i) filter number; ~~the~~
- (ii) turbidity measurement; and ~~the~~
- (iii) date ~~on which~~ **when** the exceedance occurred.

In addition, the system shall arrange for the conduct of a

~~comprehensive performance evaluation CPE~~ by the commissioner or a third party approved by the commissioner no later than thirty (30) days following the exceedance and have the evaluation completed and submitted to the commissioner no later than ninety (90) days following the exceedance.

(3) Additional reporting requirements for Subpart H systems serving a population of at least ten thousand (10,000) individuals are as follows:

(A) If at any time the turbidity exceeds one and zero-tenths (1.0) nephelometric turbidity unit in representative samples of filtered water in a Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals using conventional filtration treatment or direct filtration, the system shall inform the commissioner as soon as possible, but no later than the end of the next business day.

(B) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the commissioner under section 3 of this rule for filtration technologies other than:

- (i) conventional filtration treatment;
- (ii) direct filtration;
- (iii) slow sand filtration; or
- (iv) diatomaceous earth filtration;

Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall inform the commissioner as soon as possible, but no later than the end of the next business day.

(4) **Beginning January 1, 2005, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals shall maintain the results of individual filter monitoring taken under section 4 of this rule for at least three (3) years. The system shall report to the commissioner the results of conducting individual filter turbidity monitoring under section 3 of this rule within ten (10) days after the end of each month that water is served to the public if measurements demonstrate one (1) or more of the following conditions:**

(A) **If the turbidity of an individual filter (or the turbidity of combined filter effluent (CFE) for systems with two (2) filters that monitor CFE instead of individual filters) exceeds one and zero-tenths (1.0) NTU in two (2) consecutive recordings fifteen (15) minutes apart, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals must report to the commissioner by the tenth day of the following month and include:**

- (i) the filter number or numbers;
- (ii) corresponding date or dates; and
- (iii) turbidity value or values;

that exceeded one and zero-tenths (1.0) NTU and the cause (if known) for the exceedance or exceedances.

(B) **If a Subpart H system serving a population of fewer than ten thousand (10,000) individuals was required to report to the commissioner for three (3) months in a row**

and turbidity exceeded one and zero-tenths (1.0) NTU in two (2) consecutive recordings fifteen (15) minutes apart at the same filter (or CFE for systems with two (2) filters that monitor CFE instead of individual filters), the system must conduct a self-assessment of the filter or filters within fourteen (14) days of the day the filter exceeded one and zero-tenths (1.0) NTU in two (2) consecutive measurements for the third straight month unless a CPE as specified in clause (C) was required. Systems with two (2) filters that monitor CFE instead of individual filters must conduct a self-assessment on both filters. The system must report to the commissioner the date that the self-assessment was triggered and the date it was completed. The self-assessment must consist of at least the following components:

- (i) Assessment of filter performance.
- (ii) Development of a filter profile.
- (iii) Identification and prioritization of factors limiting filter performance.
- (iv) Assessment of the applicability of corrections.
- (v) Preparation of a filter self-assessment report.

(C) If a Subpart H system serving a population of fewer than ten thousand (10,000) individuals was required to report to the commissioner for two (2) months in a row and turbidity exceeded two and zero-tenths (2.0) NTU in two (2) consecutive recordings fifteen (15) minutes apart at the same filter (or CFE for systems with two (2) filters that monitor CFE instead of individual filters), the system must arrange to have a CPE conducted by the commissioner or a third party approved by the commissioner not later than sixty (60) days following the day the filter exceeded two and zero-tenths (2.0) NTU in two (2) consecutive measurements for the second straight month. The system must also report to the commissioner that a CPE is required and the date that it was triggered within ten (10) days after the end of each month that water is served to the public. If a CPE has been completed by the commissioner or a third party approved by the commissioner within the twelve (12) prior months or the system and commissioner are jointly participating in an ongoing comprehensive technical assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the commissioner not later than one hundred twenty (120) days following the day the filter exceeded two and zero-tenths (2.0) NTU in two (2) consecutive measurements for the second straight month.

(5) Beginning January 1, 2005, disinfection profiling and benchmarking reporting and record keeping requirements for Subpart H systems serving a population of fewer than ten thousand (10,000) individuals are as follows:

(A) Disinfection profiling reporting and record keeping requirements are as follows:

- (i) Systems must report results of optional monitoring that show:

(AA) TTHM levels less than sixty-four thousandths (0.064) mg/l and HAA5 levels less than forty-eight thousandths (0.048) mg/l (only if the system is not conducting a profile); or

(BB) the system has begun disinfection profiling by July 1, 2003, for systems serving five hundred (500) to nine thousand nine hundred ninety-nine (9,999) and January 1, 2004, for systems serving fewer than five hundred (500).

(ii) Systems subject to disinfection profiling under section 2.1 of this rule must keep results of profiling (including raw data and analysis) indefinitely.

(B) Disinfection benchmarking reporting and record keeping requirements are as follows:

(i) A system considering a significant change to its disinfection practice that is subject to disinfection benchmarking requirements under section 2.1 of this rule must report the following to the commissioner:

(AA) A description of the proposed change in disinfection.

(BB) The system's disinfection profile for *Giardia lamblia* (and, if necessary, viruses).

(CC) The system's disinfection benchmark.

(DD) An analysis of how the proposed change will affect the current levels of disinfection.

(ii) Systems subject to disinfection benchmarking under section 2.1 of this rule must keep the benchmark (including raw data and analysis) indefinitely.

(6) Systems that use lime softening may apply to the commissioner for alternative exceedance levels for the levels specified in ~~subdivision~~ subdivisions (2) and this subdivision (4) if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(Water Pollution Control Board; 327 IAC 8-2.6-5; filed May 1, 2003, 12:00 p.m.: 26 IR 2857)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on January 12, 2005 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed amendments to drinking water rules at 327 IAC 8-2, 327 IAC 8-2.1, and 327 IAC 8-2.6 concerning radionuclides, long term enhanced surface water treatment, arsenic, minor corrections to interim enhanced surface water treatment, disinfectants and disinfection byproducts, lead and copper, public notification, and analytical methods for public drinking water systems.

The purpose of this hearing is to receive comments from the public prior to consideration of final adoption of this rule by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed rule 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 MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 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 or (317) 232-6565 (TDD). 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 Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method
Deputy Commissioner
Indiana Department of Environmental Management

TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule LSA Document #04-228 DIGEST

Adds 327 IAC 17 concerning state regulated wetlands and wetland activity permits. Effective 30 days after filing with the secretary of state.

HISTORY

Second Notice of Comment Period: September 1, 2004, Indiana Register (27 IR 4209).

Notice of First Hearing: September 1, 2004, Indiana Register (27 IR 4209).

Date of First Hearing: November 10, 2004 (continued).

Date of Continued First Hearing: November 23, 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 September 1, 2004, at 27 IR 4209. 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:

#04-228 Wetland Activity Permits
Larry Wu, Chief
Rules Section
Office of Water 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 12th floor reception desk, Office of Water Quality, 100 North Senate Avenue, 12th Floor West, Indianapolis, Indiana.

Comments may also be submitted by facsimile to (317) 232-8406, 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 Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by January 21, 2004.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from September 1, 2004, through September 30, 2004, on IDEM's draft rule language. IDEM received comments from the following parties:

Indiana Manufacturers Association and Coalition on Wetland Issues (IMA/CWI)

Save the Dunes Conservation Fund (SDC)

United States Fish and Wildlife Service (USFWS)

Following is a summary of the comments received and IDEM's responses thereto:

GENERAL COMMENTS

Comment: The twin purposes of the wetlands legislation [HEA1798 and HEA1277] are (1) to promote a net gain in high quality isolated wetlands; and (2) to assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program. It is apparent, however, that these proposed rules will fail to achieve these purposes. The proposed rule removes "an exempt isolated wetland" from the term "waters" despite no process of verification for meeting the exempt criteria. (SDC)

Response: The workgroup discussed this issue. The acts HEA 1798 and HEA 1277 did not require a notification for all exemptions. However IDEM's existing enforcement authority would be triggered if a landowner filled a wetland that was not, in fact, exempt.

Comment: Developing clear mitigation goals with specific objectives and quantifiable performance standards is critical to both ensuring and determining the success of any mitigation project. Performance standards must identify: 1) the attribute to be achieved; 2) the condition or level that defines success; and 3) the period over which success must be sustained. The performance standards must be specific enough to

provide for the assessment of wetland performance over time through the measurement of attributes of wetland habitat and functions. Success in the context of the rules occurs when the performance of the mitigation wetland, as determined by the performance standards for each objective, meets or exceeds the stated goals. We support the following SWS recommendations for performance standards (<http://www.sws.org/wetlandconcerns/Performance.html>, Jan 2003), and encourage their incorporation into the rules and policies developed for state regulated wetlands and wetland activity permits:

1. Stakeholders should carefully consider project objectives and the link between these objectives and performance standards;
2. As a general rule, performance standards should be monitored for a minimum of 5 years or until the standards have been met for at least 3 consecutive years;
3. If wetland assessment techniques have been developed for the wetland type that is to be restored or created, they may provide at least a useful starting point for discussion of performance standards;
4. Because hydrology is a key factor driving wetland function, performance standards based on hydrology may be useful in many circumstances;
5. If project objectives include restoration or creation of a site to a condition similar to that of nearby natural wetlands, performance standards should be based on conditions found in the natural wetlands; and
6. Survival of planted stock or percent cover by vegetation, although often used as performance standards, do not reflect wetland function and should not be relied on as a sole measure of performance in most cases. (SDC)

Response: Mitigation success criteria or performance standards were not required by HEA 1798 and HEA 1277. Mitigation success criteria are technical issues that should be discussed in greater detail by the Wetland Science Advisory Group and others and may be better suited for incorporation into a non-rule policy document or in a revised rule subsequent to this rulemaking.

Comment: All mitigation plans must clearly describe the wetland habitat and functions that will be affected by the proposed development. Since the purpose of compensatory wetland mitigation is to replace lost or adversely impacted wetlands with wetlands having similar functions of equal or greater ecological value, the goals, objectives, and performance standards of a specific mitigation plan should be based on information derived from an ecological assessment of the impacted wetland. Such an assessment must include an evaluation of the entire wetland systems (habitats, functions, biotic and abiotic components). In the case of in-kind mitigation, an ecological assessment should be completed for both the adversely impacted wetland and the proposed mitigation site to assure development of an appropriate mitigation plan. (SDC)

Response: Mitigation success criteria or performance standards were not required by HEA 1798 and HEA 1277. Mitigation success criteria are technical issues that should be discussed in greater detail by the Wetland Science Advisory Group and others and may be better suited for incorporation into a non-rule policy document or a revised rule subsequent to this rulemaking.

Comment: At least some wetland functions may be evaluated by measuring the presence of the physical attributes that provide for that function. For example, if native fish habitat is identified as an objective, then the physical, chemical, and biological attributes that provide the correct conditions for such habitat will have to be evaluated. Assessment of the biological attributes would include identifying the species of fish that occur in the wetland, identifying their life stages, and determining the abundances of those species. Assessment of the chemical attributes would include quantification of the water quality

conditions important to the native fishes in the wetland. Assessment of the physical attributes would include characterization of the fish habitat, such as the proportion of open water habitat, the sources, timing, amount of water, and the water depths. If this function is an objective in the mitigation plan, then the information gained from the ecological assessment serves as the basis for one or more performance standards. Other examples of attributes potentially important to assessing wetlands habitats and functions include location, topography, and slope. (SDC)

Response: Mitigation success criteria or performance standards were not required by HEA 1798 and HEA 1277. See responses above.

Comment: In addition to goals, objectives, and performance standards based on an ecological assessment, all mitigation plans must have a remedial action plan and a monitoring program that includes methods for assessing both structural and functional attributes of a wetland. The monitoring program should use an approach similar to that of the ecological assessment so that the resulting data is directly comparable. (SDC)

Response: 327 IAC 17-1-5(f) has been modified to read:

If, after a reasonable monitoring period, the department finds that the compensatory mitigation does not successfully offset the loss of wetlands authorized by the permit consistent with section 1(b)(2) of this rule, ~~the department may require corrective action; the department shall take actions as necessary to ensure compliance with 327 IAC 17.~~

This language authorizes IDEM to require corrective action should the mitigation prove to be unsuccessful.

Comment: Successful wetland mitigation requires significant expenditures of resources at the initial planning stages of a project. This comprehensive planning and implementation is essential to meeting the goals of the wetlands legislation, particularly given the current lenient requirements for the long-term protection and monitoring of mitigation wetlands. (SDC)

Response: IDEM agrees with the commentor, however, mitigation design is a technical issue that should be addressed subsequent to this rulemaking in a non-rule policy document or subsequent rulemaking.

Comment: A mitigated wetland should become a "state regulated wetland" before its success has been demonstrated. A mitigated wetland must be regulated to evaluate its success, thereby assuring "that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program." Allowing a mitigated wetland to become another impacted wetland before its success is determined will violate the goals of the rules by contributing to the temporal loss of wetlands. (SDC)

Response: IDEM interprets the HEA 1798 and HEA 1277 to mean that a mitigation site becomes a State Regulated Wetland when the permitted wetland activity begins.

Comment: Class II wetland is defined in the negative. The draft rules explain what it is not, not what it is. (SDC)

Response: The definition of Class II referred to here is identical to the language found in HEA 1277.

Comment: The legislation does not contain nor reference public participation requirements affecting isolated wetland decisions. Public participation requirements must be added to this rulemaking. (SDC)

Response: IDEM agrees. We have added a new section to 327 IAC 17-4. This section will create a public notice mechanism for individual permits comparable to the public process now employed for 401 water quality certifications for federally jurisdictional waters.

Comment: The first stated purpose of the State Regulated Wetlands (SRW) Rule is to "promote a net gain in high quality isolated wetlands". Since more than 90% of the remaining wetlands in Indiana are on private lands, voluntary restoration by private landowners will

be the primary way to achieve that objective. While existing voluntarily created wetlands are considered exempt isolated wetlands, existing degraded wetlands which landowners may want to voluntarily restore are subject to the SRW Rule. This may have a discouraging impact on landowners wishing to voluntarily restore wetlands on their property if the process becomes too burdensome. The primary concern is that there appears to be little stated recognition in the proposed rule language regarding the importance of voluntary restoration in achieving the ultimate goal of net gain, nor are there specific provisions that would differentiate a regulated activity for the purpose of restoring a wetland versus a regulated activity for the purpose of economic gain or convenience. (USFWS)

Response: 327 IAC 17-2-2(b)(9) creates a general permit for the restoration activities suggested by the commentor.

Comment: Most voluntary wetland restoration projects involving private landowners are relatively simple projects designed to restore hydrology to drained wetlands and facilitate the restoration of the wetland plant community. As such, they typically involve removing tile drainage and/or plugging drainage ditches to restore hydrology to the site. One concern we have involves the use of certain language from the Regional General Permit Special Conditions list used for Nationwide Permit 27 under the Section 404/401 Program. Specifically, Special Condition #3 implies that any project involving the plugging of a drainage ditch, no matter how small or isolated from any other water source, would constitute “damming” and thus would remove that project from consideration under the General Permit for the SRW Rule. We feel that this would eliminate many of these small, simple restoration projects from a General Permit process that is specifically designed to facilitate activities such as restoration. We recommend that a provision be added that would allow for projects where ditch plugs are the sole fill activity to be included in the types of projects allowable under the General Permit. (USFWS)

Response: The situation suggested by the commentor would be extremely rare since, (1) wetlands with ditches running through them are unlikely to be considered isolated wetlands and (2) the majority of the properties on which these types of activities have occurred in the past are agricultural and therefore exempted. Should this situation arise, where a large area of a SRW is affected by a small area of fill, IDEM believes it is appropriate under the state wetlands law to provide for a more specific review than that afforded by the general permit.

Comment: A concern that we have, which may discourage landowners from pursuing some of these restoration projects, involves the requirement to conduct wetland delineations on all wetlands on the tract. For some projects, this might involve significant costs if the wetland restoration project is on a tract containing many wetlands. While we understand the desire to get the “big picture” of how the proposed project fits in with the other wetlands in the landscape, the requirement for a formal delineation for every wetland on the tract could eliminate some potential restoration projects simply on funding issues alone. We realize that a differentiation of requirements based on project intent is a difficult line to draw, but our concern goes back to the original stated purpose of rule, which is to foster a net gain of high quality isolated wetlands. We feel that one of the best ways to achieve this goal is to encourage the voluntary restoration of degraded (i.e. Class I) wetlands. (USFWS)

Response: IC 13-11-2-74.5(c) and IC 13-11-2-74.5(d) require one to know the area of the wetlands on the tract.

SPECIFIC COMMENTS TO RULE 1

Comment: In 327 IAC 17-1-1, we suggest rewording the first sentence of subsection (a) as follows: “This article governs the issuance of **wetland activity** general and individual permits **for wetland activities** in state regulated wetlands.” (IMA/CWI)

Response: IDEM agrees. These changes have been made.

Comment: It is suggested that the phrase “consistent with the Clean Water Act” be deleted from subsection (b) of Section 1 since the Clean Water Act technically is not applicable to the subject of isolated wetlands. Such wetlands, not being waters of the United States, are outside the scope of the CWA. (IMA/CWI)

Response: IDEM agrees. This change has been made.

Comment: In 327 IAC 17-1-3, the definitions included in this section are essentially verbatim replicas of those provided in IC 13-11-2. We recommend that Section 3 simply reference the statutory definitions. This would make the rule much shorter and avoids errors creeping into the language as reiterated. This could be done as follows:

Sec. 3. The following terms, as used in this article, have the same meaning as stated in IC 13-11-2:

“Class I wetland”; “Class II wetland”; “Class III wetland”; “Clean Water Act”; “compensatory mitigation”; “dredged material”; “exempt isolated wetland”; “isolated wetland”;... (IMA/CWI)

Response: In an effort to make this rule as user friendly as possible, the draft rule minimizes references to other documents whenever possible.

Comment: If the agency insists on replicating the statutory definitions within the draft rule, then the definition for “exempt isolated wetland” needs correction as follows:

(7) “Exempt isolated wetland” means an isolated wetland that:

(A) is a voluntarily created wetland unless:

(i) the wetland is approved.....

(K) An isolated wetland described in clause (E) and **or** clause (F) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under clause (E) and **or** clause (F), **as applicable**, consistent with the applicable limitations described in clauses **(I) and (J)** and (K). (IMA/CWI)

Response: IDEM has changed this to be identical to the language used in HEA 1798 and HEA 1277.

Comment: We suggest adding a new definition, “waters of the United States”, to the draft rule to replace the term “federally jurisdictional”, which is not a standard term. “Waters of the United States” can be defined by reference to 33 CFR 328.3. (IMA/CWI)

Response: IDEM agrees. This change has been made.

Comment: There is no definition for “fill” anywhere in the draft rules. There is also no definition of de minimis despite the fact that SDC has provided a definition from Corps of Engineers documents. (SDC)

Response: Both of these terms have commonly understood meanings. Prior to the passage of HEA 1798 and HEA 1277, the wetland regulatory program operated without formal definitions for these terms in rules. Should confusion arise, the details of what constitutes “fill” and what constitutes “de minimis” can be incorporated into a non-rule policy document.

Comment: 327 IAC 17-1-3 (15) which contains a definition of wetlands delineation or delineation for purposes of the rule fails in section (b) to include “boundaries” as part of the technical assessment. (SDC)

Response: This definition is identical to IC 13-11-2-265.8.

Comment: We support the provisions added at 327 IAC 17-1-5 (4). We also support the provisions at subdivision (5) with the change that the department shall [instead of “may”] require corrective action. (SDC)

Response: IDEM agrees with this comment and will change this subdivision as follows:

If, after a reasonable monitoring period, the department finds that the

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compensatory mitigation does not successfully offset the loss of wetlands authorized by the permit consistent with section 1(b)(2) of this rule, the department ~~shall may require corrective action; take actions as necessary to ensure compliance with 327 IAC 17.~~

Comment: We recommend the following revisions to this section for clarity and consistency with the underlying statute, IC 13-18-22-6. In the last two subsections of this draft section, we recommend deleting the phrase “consistent with section 1(b)(2) of this rule” since it adds no meaning or content to these subsections.

Sec. 5. (a) Except as otherwise specified in subsection (b) 6; compensatory mitigation, **where required under this article**, shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-Site Ratio	Off-Site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1 Nonforested 2 to 1 Forested	2 to 1 Nonforested 2.5 to 1 For- ested
Class III	Class III	2 to 1 Nonforested 2.5 to 1 Forested	2.5 to 1 Nonforested 3 to 1 Forested

(b) ~~(+)~~ The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) ~~(2)~~ The off-site location of compensatory mitigation must be within:

(A) the same eight (8) digit U.S. Geological Service hydrologic unit code; or

(B) the same county;

as the isolated wetlands subject to the authorized wetland activity.

(d) ~~(3)~~ Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in state regulated wetlands. An exempt isolated wetland that is used to provide compensatory mitigation becomes a state regulated wetland.

(e) ~~(4)~~ Mitigation plans required under 327 IAC 17-2-3(2)(A), 327 IAC 17-3-3(7), and 327 IAC 17-4-3(7) shall contain monitoring provisions that are sufficient to monitor the performance of the compensatory mitigation wetland until it is demonstrated to successfully offset the loss of wetlands authorized by the permit ~~consistent with section 1(b)(2) of this rule.~~

(f) ~~(5)~~ If, after a reasonable monitoring period, the department finds that the compensatory mitigation does not successfully offset the loss of wetlands authorized by the permit ~~consistent with section 1(b)(2) of this rule;~~ the department may require corrective action. (IMA/CWI)

Response: IDEM agrees. Changes have been made.

Comment: 327 IAC 17-1-6, which allows the commissioner to allow exceptions to compensatory mitigation fails to meet the “assurance” goal of the law and the draft rules. If the commissioner exercises this discretion, it must be accompanied by a written statement of reasons included in the permit which qualifies as a “decision” and should be appealable. See also 327 IAC 17-3-3 (7) which requires an applicant seeking to use this exception to make a demonstration that the site or activity meets “specific circumstances.” Where are the specific circumstances in 17-1-6? (SDC)

Response: The authority for the above referenced decision comes from IC 13-18-22-5(c). The wording of IC 13-18-22-5(c) states that IDEM “may” allow exceptions to mitigation. These exceptions are therefore not required and are at IDEM’s discretion. The specific, limited circumstances are a technical issue that may be better suited for

incorporation into a non-rule policy document after the rule is adopted.

Comment: In 327 IAC 17-1-7, for the purpose of assuring consistency with the authorizing statutes – IC 13-18-22-1(b) in this case – and clarity, the following revisions are recommended to this section:

Sec. 7. The following **wetland** activities are exempt from permitting **under this article**:

(1) The discharge of:

(A) dirt;

(B)... (IMA/CWI)

Response: IDEM agrees. These changes have been made.

Comment: We suggest that sections 9 and 10 of Rule 1 should be relocated to Rule 4 [327 IAC 17-4] since the two sections are only applicable to the issuance of individual permits and Rule 4 is the only rule of article 17 dealing with individual permits. (IMA/CWI)

Response: IDEM agrees. These sections have been moved to Rule 4.

Comment: In 327 IAC 17-1-9, “reasonable alternative demonstration” language in subdivisions (1), (2), and (3) are without criteria for a demonstration. A resolution that makes a statement without stating reasons is not reasonable. (SDC)

Response: This language gives IDEM the authority to require these demonstrations. Details of what is a reasonable resolution may be better suited for incorporations into a non-rule policy document.

Comment: In 327 IAC 17-1-10, “Reasonably necessary or appropriate demonstration” language in subdivisions (1), (2), and (3) has no criteria for either demonstrating “reasonably necessary” or “appropriate.” (SDC)

Response: This language gives IDEM the authority to require these demonstrations. Details of what is a reasonable resolution may be better suited for incorporations into a non-rule policy document.

Comment: 327 IAC 17-1-11 requires IDEM to issue a notice of decision. How will the public be notified? (SDC)

Response: A new section, 327 IAC 17-4-10, has been added to create a public noticing mechanism similar to that used in the water quality certification program.

SPECIFIC COMMENTS TO RULE 2

Comment: In 327 IAC 17-2-1, we recommend the following clarification in the first sentence of this proposed section. This proposed revision more accurately describes the nature of a general permit rule.

“This rule ~~governs the issuance of wetland activity~~ **establishes a general permits for permit to authorize wetland activities with minimal impact to Class I and Class II wetlands that are state regulated wetlands.** This rule establishes....” (IMA/CWI)

Response: This language has been changed to read:

This rule **establishes a general permit to authorize wetland activities with minimal impact to Class I and Class II wetlands that are state regulated wetlands. This rule**

~~(1) governs the issuance of;~~ **and**

~~(2) establishes procedures and criteria for the review of applications for wetland activity general permits for minimal impacts to SRWs.~~

Comment: In 327 IAC 17-2-2, the following editorial changes are proposed to subsection (a) to better explain the rule and delete extraneous references to the Corps’ nationwide permits. In addition, we suggest that it would be preferable to separate the actual general permit authorizations into a separate section 3 rather than to leave them within section 2, which addresses general applicability of the rule.

“(a) This rule applies to persons proposing to undertake wetland activities in Class I and II state regulated wetlands that will have minimal impacts, **as described in subsequent sections of this rule, including activities applicable to State Regulated Wetlands that**

would be allowed under the nationwide permit program (as published in 67 Fed. Reg. 2077-2095 (2002)).

Not only are the references in this subsection(a) to the NWP's extraneous to the substance of this rule, but the manner in which the reference is made leads to an arguably inaccurate conceptual understanding. The NWP's are intended for activities proposed to be conducted in waters subject to the Corps' jurisdiction under the Clean Water Act. Thus, the NWP's are not germane to activities proposed for SRW's, which are outside the scope of CWA jurisdiction. We don't think IDEM intends to convey that NWP's would be applicable to activities in SRW's but the language of the draft rule could be reasonably understood as suggesting that conclusion.

The best course is not to include a reference to NWP's. (IMA/CWI)

Response: IDEM agrees. These changes have been made.

Comment: We recommend that 327 IAC 17-2-2(b)(7)(A) be rewritten to read as follows:

(7) Activities required for the construction, maintenance and repair of utility lines and associated facilities in SRW's as follows:

(A) The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all SRW's, provided there is no **substantial** change in preconstruction contours. *[Comment: to require absolutely no change in preconstruction contours, as the draft rule presently does, appears to be unnecessarily rigid and inflexible.]* As used in this clause, a "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical, **electromagnetic, or optical energy, including but not limited to transmissions for electrical power or for communications of any nature. telephone, and telegraph messages, and radio and television communication.** *[Comment: given the increasing prevalence of fiber optic cable and cable for broadband internet connections, it seems prudent to be more general in the description of such utility purposes.]* Material resulting from trench excavation may be temporarily sidecast (up to three (3) months) into SRW's, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The Commissioner may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In **Class II** wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain SRW's (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the SRW's through which the utility line is installed. Any exposed slopes and ~~stream~~ banks must be stabilized immediately upon completion of the utility line crossing of each SRW. (IMA/CWI)

Response: The language has not been revised in order to maintain consistency between federal and state general permitting programs. IDEM does not believe that the existing language will pose implementation difficulties.

Comment: We recommend that a new 327 IAC 17-2-2(b)(7)(B) be added to read as follows and the rest of the subdivision be renumbered as appropriate:

(B) **The construction, maintenance or expansion of a substation facility associated with a power line or utility line, provided that the activity does not result in the loss of greater than ½ acre of SRW's.**

[Comment: This element of NWP 12 was omitted from the draft rule but appears to have potential applicability to activities in SRW's.] (IMA/CWI)

Response: IDEM agrees. These changes have been made.

Comment: We recommend that the original 327 IAC 17-2-2(b)(7)(C) be rewritten to read as follows:

(D) ~~(C)~~ The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in SRW's, provided the discharges do not cause the loss of greater than ½-acre of SRW's. Access roads shall be the minimum width necessary. Access roads must be constructed so that the length of the road minimizes the adverse effects on SRW's and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). ~~Access roads constructed above preconstruction contours and elevations in SRW's must be properly bridged or culverted to maintain surface flows.~~ *[Comment: this constraint seems unnecessary in a SRW where currents or surface flows would be expected to be minimal if existent at all.]* As used in this clause, the term "utility line" does not include activities which drain a SRW, such as drainage tile, or french drains; however, it does include pipes conveying drainage from another area. For the purposes of this clause, the loss of SRW's includes the filled area plus SRW's that are adversely affected by flooding, excavation, or drainage as a result of the project.

Activities authorized by clauses (A) through (C) may not exceed a total of one half (1/2) acre loss of SRW's. SRW's temporarily affected by..." *[No further comments offered on this subdivision.]* (IMA/CWI)

Response: The proposed change has not been made. If the SRW in question does not have flow to maintain, then the language in question will not affect the applicability of the general permit. However, situations in which flow, perhaps to or from groundwater, is interrupted or impeded are possible in an SRW.

Comment: We recommend that 327 IAC 17-2-2(b)(9)(A) be rewritten to read as follows:

(9) Activities in SRW's associated with the restoration of former wetlands, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, and the restoration and enhancement of streams and open water areas as follows:

(A) The activity is conducted on:

(i) non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), ~~the National Marine Fisheries Service, the National Ocean Service,~~ or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations;

[Comment: the stricken agencies seem unlikely to be active in Indiana Thus, we suggest that they should be deleted.]

(ii) reclaimed surface coal mine lands **subsequent to reclamation bond release and termination of OSM/IDNR jurisdiction under the Surface Mining Control and Reclamation Act and IC 14-34, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the Indiana Department of Natural Resources** *[Comment: any activity conducted on reclaimed surface coal mine land prior to release of a reclamation bond would be subject to and governed by the reclamation provisions of the SMCRA permit for the mine site. Such activities would be exempt from permitting under IC 13-18-22-1 and any reference thereto is superfluous to this proposed rule. Thus, it is proposed to revise this subparagraph (ii) to refer only to activities undertaken after*

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release of the bond.] (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or
(iii) any other public or private ~~or tribal~~ lands. **[Comment: there are no tribal lands remaining in Indiana.]**

(IMA/CWI)

Response: IDEM agrees. The changes have been made.

Comment: We recommend that 327 IAC 17-2-2(b)(9)(B) be rewritten to read as follows:

(B) Planting of only native species should occur on the site. Activities authorized by this subdivision include, to the extent that a ~~IC 13-18-22-1~~ permit is required **under IC 13-18-22**, the removal of accumulated sediments; the installation, removal, and maintenance of, dikes, and berms; **the removal of existing drainage structures;** **[Comment: removal of existing drainage structures is an element of NWP 27 and seems possibly germane here.]** the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non- native invasive, exotic or nuisance vegetation; and other related activities. This subdivision does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this subdivision authorizes the relocation of wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this subdivision may authorize the creation of an open water impoundment in an emergent wetland, provided the emergent wetland is replaced by creating that wetland type on the project site. For enhancement, restoration, and creation projects conducted under item (9)(A)(iii), this subdivision does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion **if not otherwise exempt under this article**. For restoration, enhancement, and creation projects conducted under item (9)(A)(i) and item (9)(A)(ii), this subdivision also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) **if a permit is otherwise required under this article for such reversion activities**. The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after a permit issued under this subdivision expires. This subdivision also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require an IC 13-18-22-1 permit). The five-year reversion limit does not apply to agreements without time limits reached under item (9)(A)(i). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity, the permittee or the appropriate Federal or state agency must notify the commissioner and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever ~~the department's~~ regulatory requirements **are applicable** ~~will be~~ at that future date.

[As an overall Comment on this subdivision, it would appear to largely deal with activities relating to voluntarily created wetlands

that would be exempt under the authorizing statutes. It is unclear whether and to what extent some activities identified within this subdivision would not be exempt.] (IMA/CWI)

Response: IDEM agrees with the commentor's language and have made these changes with one exception, the addition of the phrase "the removal of existing drainage structures." Drainage structures, in order to be effective, must drain somewhere. If the wetland in question is not isolated then it is not a SRW. Regarding the commentor's general comment at the end, these rules do not exempt wetland activities for the purpose of enhancement of an existing wetland.

Comment: 327 IAC 17- 2-2 (b) (9) (B) should be changed to require planting of native species, instead of making it optional. (SDC)

Response: IDEM agrees. Changes have been made.

Comment: No provision is included in the draft general permit rule comparable to NWP 25 which addresses structural discharges. This activity seems relevant to the SRW context and it is recommended that it be included. (IMA/CWI)

Response: To maintain consistency between federal and state general permitting programs the Regional General Permit, which replaced Nationwide Permit 14, 18, 25, 29, 39, 42, and 44, has been incorporated in this rule as 327 IAC 17- 2-2 (b) (11) in lieu of Nationwide Permit 25.

Comment: We recommend 327 IAC 17-2-2(b)(11)(C) to be rewritten as follows:

(C) Discharges of dredged or fill material authorized by this subdivision are limited to **0.2 acre or less for Class I SRWs and 0.1 acre or less of Class II SRWs State Regulated Wetlands;** **[Comment: wetland activities should be authorized over a greater acreage of Class I wetlands as a minimal impact than for Class II wetlands.]**

(IMA/CWI)

Response: There is no rationale provided for this specific acreage level and there is no rationale for providing a different level of exemptions for SRW than for implementation of the NWP for federal jurisdictional waters.

Comment: 327 IAC 17-2-2(b)(11)(D)(i) is superfluous. If authorization is denied by another agency having jurisdiction over the activity, that action governs in any event and there is no need to interrelate this general permit authorization to such actions of other agencies. (IMA/CWI)

Response: This language has been changed to read:

"Authorization of activities under this rule does not substitute for any separate authorizations required by other local, state or federal requirements."

Comment: 327 IAC 17-2-2(b)(11)(D)(ii) is superfluous since the wetland activities described in the various provisions of this general permit are per se deemed to be of minimal impact. Even if it were not superfluous, this condition would be objectionable as quite vague even with respect to unacceptable adverse impacts on aquatic resources. There is no indication of what other public interest factors would be implicated by this provision. Clause (D), as a whole, is unneeded since both items (i) and (ii) are shown to be superfluous. We recommend that Clause (D) is stricken. (IMA/CWI)

Response: IDEM does not agree that fill in some locations does not have the potential to cause adverse impacts and may cause impacts disproportionately large compared to the area of the fill. These impacts are not analogous to the nationwide permits and may not be minimal impacts. These impacts should not be authorized under a general permit. The Regional General Permit, from which this language was derived, included this provision as a safeguard.

Comment: We recommend that 327 IAC 17-2-2(b)(11)(E) be stricken. The only basis for inapplicability of the general permit is that

proposed or actual activity is not within the prescribed activities of the general permit. (IMA/CWI)

Response: IDEM does not agree that the language should be stricken. This language merely instructs IDEM upon the course of action to take when the scenario suggested by the commentor arises. That is to say if an applicant sends in a notification of an activity other than those prescribed activities of the general permit, IDEM is to notify the applicant and require the applicable permit.

Comment: 327 IAC 17-2-2 (b) (11) sets a limit for discharges of dredge and fill under a general permit of 0.1 acre or less, which virtually wipe out small wetlands. For example, for a Class I wetland that is slightly over ½ acre would allow fill up to 20% of the wetland, and for Class II wetland slightly over 1/4 acre would allow fill up to 40 or more % of the wetland. A better solution applicable to small wetlands would be use of a percentage. In other words, size matters here. (SDC)

Response: The proposed language is consistent with current implementation in the federal program and is retained in the rule to maintain consistency between federal and state general permitting programs.

Comment: We recommend relocating 327 IAC 17-2-3 to a point immediately following 327 IAC 17-2-4, which states general conditions to the general permit. We believe it is a more logical organization to place the two sections dealing with the substance of the minimal impacts general permit in direct proximity. (IMA/CWI)

Response: IDEM disagrees based on the specific direction of the state wetlands law. IDEM believes that 327 IAC 17-2-3 should be located before 327 IAC 17-2-4.

Comment: The following revision is proposed to the first sentence of the opening paragraph of 327 IAC 17-2-3:

“As a prerequisite to the applicability to a specific wetland activity of the minimal impact general permit **authorization established by this rule to a specific wetland activity**, a person proposing the wetland activity discharge is required to submit to the department a notice of intent...” (IMA/CWI)

Response: To improve clarity, IDEM has revised the rule language to read as follows:

“A person proposing a wetland activity must submit a notice of intent to the department as a prerequisite to applicability of the minimal impact general permit.”

The subsequent language about what a notice of intent must include has been removed from both Rule 2 and Rule 3 and relocated to the definitions section to reduce redundancy.

Comment: 327 IAC 17-2-3(1)(E)(i) appears to be confusing actions prior to January 1, 2004, that have affected the classification of an isolated wetland with wetland activities proposed after January 1, 2004, which would require a permit under IC 13-18-22. Regardless of what past activities occurred, when they occurred (so long as it was prior to January 1, 2004) is not relevant to the present application for a wetland activity permit. (IMA/CWI)

Response: For reasons explained in another response, please be aware that 327 IAC 17-2-3(1)(E)(i) has been relocated to 327 IAC 17-1-3(9)(A)(v)(AA). IC 13-11-2-25.8(b) states, “for the purpose of this section, a wetland or setting is not considered disturbed or affected as a result of an action taken after January 1, 2004, for which a permit is required under IC 13-18-22 but has not been obtained.” The information required by 327 IAC 17-1-3(9)(A)(v)(AA) is therefore necessary to correctly apply the classification.

Comment: In 327 IAC 17-2-3(1)(E)(ii), no permit application is required for the exempt activities referenced by this item. Thus, there is no need to provide the dates of such activities. A person conducting such activities would be prudent to maintain records which corroborate

the exempt nature of the activities but this is not a matter for regulation. (IMA/CWI)

Response: For reasons explained in another response, please be aware that 327 IAC 17-2-3(1)(E)(ii) has been relocated to 327 IAC 17-1-3(9)(A)(v)(BB). The exemptions referenced by 327 IAC 17-1-3(9)(A)(v)(BB) are limited by IC 13-11-2-74.5(c), IC 13-11-2-74.5(d), and IC 13-11-2-74.5(e). IDEM, when reviewing an application or notification is likely to discover that past wetland fill has occurred. Without the information required by 327 IAC 17-1-3(9)(A)(v)(BB), the activity will likely be found to be outside of the scope of the general permit and the tract referred for enforcement action since there is little time for an investigation during the review period specified by HEA 1798 and HEA 1277. Providing the information with the application or the notification will reduce the number of unnecessary out of scope findings and enforcement investigations, and will result in a savings of time and money for both the applicant and IDEM.

Comment: In 327 IAC 17-2-3(1)(E)(iii), no permit is needed for the voluntary creation of an isolated wetland. Once created, such a wetland is exempt such that any subsequent wetland activity affecting the wetland does not require a permit under IC 13-18-22. Thus, no need exists for a permit application or for the date information specified in this item. Only if the owner of the voluntarily created wetland transfers the wetland to state regulated wetland status through the process described in IC 13-11-2-74.5(a)(1)(C) would future wetland activity in the wetland require a permit and, thus, a permit application. (IMA/CWI)

Response: For reasons explained in another response, please be aware that 327 IAC 17-2-3(1)(E)(iii) has been relocated to 327 IAC 17-1-3(9)(A)(v)(CC). IDEM needs to know which wetlands on a tract are regulated and which wetlands are exempt. IDEM, when reviewing an application or notification, is likely to discover wetlands, other than those listed in the application or notification, that have been or will be filled by the planned activity. Without the information required by 327 IAC 17-1-3(9)(A)(v)(CC), the activity will likely be found to be outside of the scope of the general permit since there is little time for an investigation during the review period specified by HEA 1798 and HEA 1277. If the voluntary wetland has been filled, the tract could mistakenly be referred for enforcement action. Providing the information with the application or the notification will reduce the number of unnecessary out of scope findings and enforcement investigations, and will result in a savings of time and money for both the applicant and IDEM.

Comment: 327 IAC 17-2-3(1)(E)(iv) involves a potentially more complicated situation, depending on whether the isolated wetlands is an exempt wetland or not under the relevant statutes. If the wetland is exempt, then any restoration activity is outside the regulatory structure. On the other hand, if the wetland is a state regulated wetland, then the restoration activity, even though the resulting upgrade in condition would be a “voluntarily created” wetland feature, a permit may be needed to authorize the activity since it would occur in a regulated wetland. Here again, though, we fail to perceive what dates would be pertinent to an application for a permit. (IMA/CWI)

Response: For reasons explained in another response, please be aware that 327 IAC 17-2-3(1)(E)(iv) has been relocated to 327 IAC 17-1-3(9)(A)(v)(DD). According to IC 13-18-22-2(c), “The classification of an isolated wetland that is based on the level of disturbance of the wetland by human activity or development may be improved to a higher numeric class if an action is taken to restore the isolated wetland, in full or in part, to the conditions that existed on the isolated wetland before the disturbance occurred.” IDEM therefore needs to know if restoration has occurred to properly apply the classification.

Comment: Regarding 327 IAC 17-2-3(1)(E)(v), IC 13-18-22-10

does not address the filling, draining, or elimination of an isolated wetlands after January 1, 2004. This statute only describes certain past activities that are outside IDEM's scope of authority. No permit application is applicable to such a circumstance and there is no particular date information that would need to be submitted to IDEM. (IMA/CWI)

Response: For reasons explained in another response, please be aware that 327 IAC 17-2-3(1)(E)(v) has been relocated to 327 IAC 17-1-3(9)(A)(v)(EE). IDEM has revised to clarify as follows:

"filling, draining or elimination by other means isolated wetlands not removed from the department's authority by IC 13-18-22-10."

Comment: Regarding 327 IAC 17-2-3(1)(E)(vi), if the land on which an isolated wetland is located is no longer subject to USDA wetland conservation rules so that the wetland is no longer exempt, a permit would be needed for future proposed wetland activity in that wetland unless otherwise exempt for other reasons. A permit application would be needed as for any other proposed wetland activity but no particular dates are pertinent. (IMA/CWI)

Response: For reasons explained in another response, please be aware that 327 IAC 17-2-3(1)(E)(vi) has been relocated to 327 IAC 17-1-3(9)(A)(v)(FF). To improve clarity IDEM has revised this language as follows:

"wetland activities that occurred on land previously exempted by 327 IAC 17-1-3(7)(G) if:

- (aa) the land is no longer subject to United States Department of Agriculture wetland conservation rules; and
- (bb) the wetland activities were not in compliance with United States Department of Agriculture wetland conservation rules."

Comment: 327 IAC 17-2-4(2) may require that dredged material in a contained upland disposal area is tested for contamination, but subdivision (10) does not make the same requirement for work, activity, or discharge into an SRW. Why not? (SDC)

Response: Subdivision (10) prohibits the use of "unsuitable" material. The details of how to test a material's suitability may be more appropriate for inclusion in a non-rule policy document than in a rule given the technical nature of this topic.

Comment: 327 IAC 17-2-4(6) is considerably more restrictive than its counterpart general condition associated with the NWP's – General Condition 11, entitled "Endangered Species." Proposed subdivision (6) would not authorize any activity under the general permit "where state endangered, threatened, or rare species are documented on a permanent or seasonal basis within a one-half (½) mile radius of the proposed project site by the Indiana Natural Heritage Data Center." Thus, regardless of whether there is any basis to conclude that the proposed activity would have an adverse impact on the ETR species, no authorization will be given under the general permit.

In addition, it is believed that a one-half mile radius is greater than necessary for adequate consideration of potential impacts from wetland activity and that a one-quarter mile radius should be more than adequate for this purpose. Consequently, we recommend the following revisions to draft subdivision (6):

"No activity is authorized under this general permit **that: (i) is likely to jeopardize the continued existence of a** where state endangered, threatened or rare species **that is** are documented on a permanent or seasonal basis within a **one-quarter (1/4) one-half (½)** mile radius of the proposed project site by the Indiana Natural Heritage Data Center; **or (ii) will destroy or adversely modify the critical habitat of such species.** (IMA/CWI)

Response: The occurrence of a listed species in close proximity to the location of the wetland activity is sufficient reason to take a closer look at the wetland activity proposed than is afforded under the general

permit review deadlines. The fact that the wetland activity would not qualify under the general permit does not mean that the activity will not be permitted. It simply means that IDEM should take a closer look using the individual review procedures under 327 IAC 17-4.

Comment: We suggest that the clarity of 327 IAC 17-2-4(7) would be improved if it were revised to read:

"Upon completion of the wetland activity and any required mitigation, every the permittee will shall submit a signed certification regarding the completed work and any required mitigation to the department. The certification will include the following: (IMA/CWI)

Response: IDEM agrees. These changes have been made.

Comment: We suggest that 327 IAC 17-2-4(8) may be stated in a more positive fashion as follows:

"The use of more "More than one (1) general permit provision may be used for a single and complete project to the extent applicable is prohibited; provided that except when the acreage loss of SRWs authorized by the all general permit provisions utilized does not exceed the acreage limit of the general permit provision with the highest specified acreage limit." (IMA/CWI)

Response: IDEM agrees. These changes have been made.

Comment: 327 IAC 17-2-4(9) does not seem likely to have any applicability in the context of SRWs. (IMA/CWI)

Response: The definition of isolated wetlands and therefore SRW hinges on what the federal agencies determine to be Waters of the US. It is difficult to predict how the definition of Waters of the US will be applied in the future. Given this uncertainty IDEM believes it is far safer to include this provision.

Comment: Regarding 327 IAC 17-2-4(11), the relevant statutes, IC 13-18-22-4, IC 13-18-22-5(b)(2), and IC 13-18-22-6, do not expressly provide for review and approval by the Commissioner of the compensatory mitigation plan filed by a permit applicant with the NOI for authorization under the minimal impact general permit. The mitigation plan is to be consistent with the provisions of IC 13-18-22-6, which is rather straightforward. If the mitigation plan is clearly inadequate, the permit applicant is not in compliance with the law and the agency can respond accordingly. (IMA/CWI)

Response: IC 13-18-22-1(c)(2) states that one of the goals of this permitting program is to "assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program." IDEM can make no such assurances without reviewing the mitigation plan. Furthermore IC 13-18-22-4(a) instructed IDEM to adopt general permits analogous to the Nationwide Permits. The Nationwide Permit program includes a provision for the US Army Corps of Engineers' district engineer to review mitigation plans.

Comment: We recommend deletion of the last sentence of the main portion of 327 IAC 17-2-4(14) immediately preceding the numbered subparagraphs, which reads "The Commissioner may also designate additional critical resource waters after notice and opportunity for comment." This sentence is superfluous, being redundant with the preceding sentence of the condition.

For the general permit provisions listed in subparagraph (B) of this proposed condition, the activities described in those permit provisions should be stated to be authorized in critical resource waters. The described eligibility determination to be made by the Commissioner under the proposed condition is unnecessary since all activities described by the various provisions of this proposed general permit are categorically deemed *per se* to have minimal impact. (IMA/CWI)

Response: IDEM agrees that the last sentence of the main portion of 327 IAC 17-2-4(14) is superfluous, and has deleted it. IDEM does not agree with the comment concerning clause (14)(B). This language was taken from Nationwide Permit Condition number 25. It provides

additional protection to critical resource waters from certain activities otherwise permitted under this rule.

Comment: Under 327 IAC 17-2-4 (14), we suggest adding designated Scenic Streams to the list of critical waters. The last sentence refers to the commissioner designating additional critical resource waters. Is this still possible under Indiana law? (SDC)

Response: These rules deal only with State Regulated Wetlands, not streams.

Comment: 327 IAC 17-2-4(15), which would bar authorization of discharges of dredged or fill material into SRWs within the 100 year floodplain that would result in permanent above-grade fills, is more stringent than NWP 26, which is the apparent source for this proposed condition. Even without this disparity, we would strongly suggest that concerns about adverse effects of such above-grade fill on flood storage capacity should be addressed through state floodplain management regulation and need not be governed by this general permit. (IMS/CWI)

Response: IDEM does not agree that this language is more stringent than US Army Corps of Engineers' Nationwide Permit general condition number 26.

Comment: No verification process, as referenced by 327 IAC 17-2-4(16), is expressly required by statute or established elsewhere within the proposed rules. In addition, no expiration date is set in the proposed rule nor is one required. These concepts, borrowed verbatim from the Corps' NWP conditions, are not germane to this rulemaking and, therefore, subdivision (16) should be deleted. (IMA/CWI)

Response: IDEM agrees. This provision has been deleted.

Comment: The intended meaning and effect of 327 IAC 17-2-4(19) is so vague and unclear that it should be deleted. It is potentially overbroad in scope, as well, appearing to deal with any "waters of the state" and not just SRWs. (IMA/CWI)

Response: IDEM does not believe that this language is vague or unclear. If the fill will result in additional impacts, it should not be permitted under the minimal impact general permit. Situations have arisen in the past in which a relatively small area of proposed fill, which would otherwise have qualified for the general permit, would have caused negative impacts disproportionate to the size of the fill itself due to its location. IDEM believes this situation deserves a more careful review than that afforded by the general permit.

Comment: The following revision is recommended to 327 IAC 17-2-4(22):

"Complete all activities necessary to construct the mitigation wetland within ~~two (2) years~~ ~~one (1) year of~~ after the effective date of the general permit authorization for the wetland activity as determined under IC 13-18-22-8(b), unless the department grants a written extension upon request. The two-year time frame applies only to the initial construction and not to any repairs, including replacement of any plantings which do not become successfully established, that may become necessary.

A two-year period is needed for construction of a mitigation wetland in view of the substantial dependence of successful construction on favorable weather conditions, which are random and unpredictable. (IMA/CWI)

Response: IDEM does not agree that all compensatory mitigation requires a two-year construction period. Ideally, compensatory mitigation should be done concurrent to the impact so as to minimize the duration that wetland functions are lost. IDEM has chosen to generalize "concurrently" to one year since this results in a clear deadline. The proposed language clearly allows for an extension of the one-year period upon request and that has worked well when needed in the past.

Comment: We recommend that 327 IAC 17-2-4(24) be deleted from

the draft rule. IC 13-18-22 does not in any way imply a need for, much less expressly require, a conservation easement or a deed restriction to protect a mitigation wetland and such provisions cannot be reasonably inferred from the statute. The only circumstance in which the statute mentions such measures is for the protection of a Class III wetland that is designated as an outstanding state protected wetland. Moreover, there is nothing in the authorizing legislation which prohibits the subsequent filling of a wetland created or restored for compensatory mitigation purposes if proper permitting, including satisfaction of compensatory mitigation requirements, were to be procured under IC 13-18-22. (IMA/CWI)

Response: The purpose of the deed restriction is to notify subsequent property owners of the existence of the mitigation site, and to allow the mitigation site to reach maturity before it can be disturbed. IDEM has revised proposed rule language to eliminate a requirement for a deed restriction for Class I sites in favor of an environmental notice on the deed. A deed restriction is maintained for Class II and Class III mitigation, however the previously required 50 year duration of the deed restriction, which is required under the Nationwide Permitting Program, was replaced by an unspecified duration commensurate with the duration the mitigation attempt is anticipated to need for maturation. IDEM believes that this 'compromise' approach retains the needed level of protection to ensure the goals of the state wetland law can be achieved without unnecessarily burdening the applicant. A deed restriction can be altered in the future through a modification to the individual permit. It is also noted that deed restrictions are required under the Nationwide Permitting program; IC 13-18-22-4(a) instructs IDEM to develop a general permit program that is analogous to the NWP.

Comment: We support the language requiring a conservation easement or deed restriction for Class II or Class III mitigation wetlands in 327 IAC 17-2-4(24). We question why this language is in this general permit section but not in the individual permit section. We oppose the added language "for the length of time consistent with the time required for maturation of the wetland type being restored or created" and urge restoration of the deleted language "for a minimum period of fifty (50) years. (SDC)

Response: This duration was changed in an effort to reach a compromise on this issue. As noted in the response above, one of the purposes of the deed restriction is to allow the mitigation site to reach maturity before it can be disturbed. Some mitigation attempts are expected to take longer to reach maturity than others. It therefore makes sense to set the duration of the deed restriction accordingly.

Comment: We suggest that 327 IAC 17-2-4(26) and (27) are unnecessary elements of the rulemaking. They are overly paternalistic and may be more appropriately addressed as part of informal guidance that IDEM might make available to persons contemplating wetland activities. (IMA/CWI)

Response: IDEM agrees. These changes have been made.

Comment: We recommend the following revision in the second sentence of 327 IAC 17-2-5:

"... If the department finds that the proposed activity is not within the scope of the minimal impact general permit, the department shall require the activity to be permitted by the applicable permit at notify the person proposing the wetland activity that a permit is required under 327 IAC 17-3 or 327 IAC 17-4, as applicable. (IMA/CWI)

Response: IDEM agrees. These changes have been made.

SPECIFIC COMMENTS TO RULE 3

Comment: The intended purpose of this draft rule is very unclear and appears to be misdirected. Instead of establishing the general permit authorization for wetland activities in Class I SRWs with more than

minimal impact, the draft rule's provisions appear to be intended to implement the streamlined, uniform permits for wetland activities in Class I wetlands that are to be issued by the IDEM prior to the adoption of a rule establishing a general permit for such activities. This conclusion is based on the inclusion in the draft Rule 3 of provisions for a Notice of Registration, as provided for in IC 13-18-22-7(b)(2)(C), and for denial of such permits, as provided in IC 13-18-22-8(d). Both provisions are restricted in applicability to the streamlined individual permits for Class I wetlands. In addition, the only reference to a general permit is in Section 4 when express language of adoption of a general permit would be expected in Sections 1, 3, 5 and perhaps other sections as well. Moreover, if the general permit for Class I wetland activities were intended, Section 3 should reference a Notice of Intent per IC 13-18-22-8(b), rather than a Notice of Registration per IC 13-18-22-7(b). Thus, at best, draft Rule 3 presents a confusing amalgam of provisions pertaining to streamlined individual permits and other provisions possibly pertaining to a general permit. (IMA/CWI)

Response: The rule is not superfluous. IC 13-18-22-4(b) states that "wetland activities in Class I wetlands shall be authorized by a general permit rule." However IC 13-18-22-7(b), IC 13-18-22-8(c) and IC 13-18-22-8(d) are in effect only until these rules are adopted. Therefore 327 IAC 17-3-3 should reference the notice of intent rather than a notice of registration. For convenience and consistency IDEM has modified this language to reference the notice of intent, which is now in the definition section of Rule 1. 327 IAC 17-3-7, which corresponded to IC 13-18-22-8(d) has also been deleted as the denial authority in IC 13-18-22-8(d) is replaced by the "scope" review in 327 IAC 17-3-5.

Comment: 327 IAC 17-3-3(7), which references the mitigation exception at 327 IAC 17-1-6, requires an applicant to "demonstrate". How does an applicant "demonstrate"? (SDC)

Response: This language gives IDEM the authority to require these demonstrations. Details of what is an adequate demonstration may be better suited for incorporations into a non-rule policy document.

Comment: In 327 IAC 17-3-4, add "Class I" in front of General Permit. (SDC)

Response: IDEM agrees. This change has been made.

SPECIFIC COMMENTS TO RULE 4

Comment: "Individual" should be added before Permit in title of 327 IAC 17-4. (SDC)

Response: IDEM agrees. This change has been made.

Comment: We see no language in this rule that the General Conditions also apply here. Why not? (SDC)

Response: HEA 1798 and HEA 1277 authorized IDEM to condition individual permits as necessary to meet the goals of the permitting program. Although those may often be identical to the general permit conditions, these acts gave IDEM the flexibility to tailor the individual permit conditions to account for site specific variations and complexities.

Comment: The specific requirements for deed restrictions or conservation easements for Class III and Class II mitigation wetlands at 327 IAC 17-2-4 (24) should also be restated in 327 IAC 17-4. (SDC)

Response: HEA 1798 and HEA 1277 authorized IDEM to condition individual permits as necessary to meet the goals of the permitting program. Although those may often be identical to the general permit conditions, these acts did give IDEM the flexibility to tailor the individual permit conditions to account for site specific variations and complexities.

Comment: 327 IAC 17-4-1 refers to "certain" Class II wetlands. How would an applicant know if his/her project is affected by reading this section? (SDC)

Response: Please see the applicability section at 327 IAC 17-4-2.

Comment: We propose revising the lead-in language of 327 IAC 17-4-3 by replacing "the discharge" with "a wetland activity." (IMA/CWI)

Response: IDEM agrees. This change has been made.

Comment: In 327 IAC 17-4-3(5), the unusual term "federally jurisdictional" should be replaced by a term such as "waters of the United States". (IMA/CWI)

Response: IDEM agrees. This change has been made.

Comment: We do not understand the rationale for the proposed requirement to "disclose dates" for various described actions in 327 IAC 17-4-3(6)(D). While the subdivision indicates that the date information is needed for the purpose of making various referenced determinations, there are no determinations required in most cases and definitely not involving dates. (IMA/CWI)

Response: Please see above responses related to the notice of intent.

Comment: 327 IAC 17-4-3(7) incorrectly assumes that "specific circumstances" for an exception to compensatory mitigation are expressly and particularly listed in 17-1-6 and, furthermore, that one of those "specific circumstances" is met with respect to the isolated wetland at issue. We propose that this subdivision should be revised to read as follows:

(7) A compensatory mitigation plan to reasonably offset the loss of wetlands allowed, unless ~~the applicant demonstrates that the site or activity meets the specific circumstances for the an~~ exception to mitigation ~~at has been granted by the department under~~ 327 IAC 17-1-6.

(IMA/CWI)

Response: IDEM agrees. These changes have been made.

Comment: 327 IAC 17-4-3(8) should be revised in format as follows to be consistent with that of IC 13-18-22-5(a)(1)(A):

(8) The applicant shall demonstrate, as a prerequisite to the issuance of the permit, that the wetland activity is:

(A) if proposed for a Class II wetland, is:

(i) without reasonable alternative per 327 IAC 17-1-9;

(ii) ~~(B)~~ reasonably necessary or appropriate; ~~to achieve a legitimate use...~~

to achieve a legitimate use proposed by the applicant on the property on which the wetland is located per 327 IAC 17-1-10; and

(B) ~~(C)~~ if proposed for a Class III wetland, is:

(i) without practical alternative; and

(ii) will be accompanied by taking steps that are practicable and appropriate to minimize..

(IMA/CWI)

Response: IDEM does not agree that these changes should be made. If, as the commentor suggested in an earlier comment, rule 3 were eliminated, IDEM would agree that this change would be necessary to ensure that these demonstrations were not required on a Class I individual permit. As noted earlier, IC 13-18-22-4(b) requires IDEM to authorize wetland activities in Class I SRWs via a general permit rule, not an individual permit. These changes are therefore not necessary.

Comment: In 327 IAC 17-4-3(9), we are unsure of the intended meaning of a "statement of affirmation." (IMA/CWI)

Response: IDEM has revised the language as follows:

A statement, signed by the applicant stating, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information

including the possibility of fine and imprisonment for knowing violations.”

Comment: We suggest that 327 IAC 17-4-5 and 327 IAC 17-4-6 be reversed in order and renumbered accordingly. The subject matter of section 6 seems logically to come before that of section 5. (IMA/CWI)

Response: IDEM does not agree and believes that rule requirements should be located before review deadlines.

Comment: 327 IAC 17-4-5 and 327 IAC 17-4-6 contain timelines that are arbitrary and capricious, and will tie the hands of IDEM in administering these regulations to accomplish the stated goals of the legislation. (SDC)

Response: These timelines are statutory requirements from IC 13-18-22-8.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On November 23, 2004, the Water Pollution Control Board conducted the first public hearing concerning the development of a new Article 17. Comments were made by the following parties:

Indiana Wildlife Federation (IWF)

Save the Dunes Conservation Fund (SDC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: On the first page, the purpose of this regulation states that it is to:

- 1) promote a net gain of high quality wetlands
- 2) assure compensatory mitigation will offset the loss of isolated wetlands.

As land use issues continue to be an issue in Indiana, we must recognize the need of regulation to balance remaining natural resources and the function they serve for the greater good against other use concerns. To some stakeholders, this resource is truly expendable. Our organization is concerned with the loss of habitat for a diverse range of wildlife species. The economic impact of wildlife related activities in Indiana is over \$3 million per year. Also, we can look to the millions of state tax payer dollars that have and will continue to be spent for flood relief for crops and other personal property throughout our state because of wetlands loss, and diminished water quality in many of our lakes and rivers. The vital functions wetlands provide are diminished within this regulation. Scientific assessment processes are not yet complete, but are necessary for implementation of the rule. (Two supporting documents were also submitted to the Water Pollution Control Board concerning the history of Indiana's wetlands and some economic facts) (IWF)

Response: The proposed rules are intended to be consistent with the provisions of the state law passed in 2004 and the Water Pollution Control Board does not have discretion to revise the coverage of the isolated wetland permit requirements in the law. IDEM is working with a group of science advisors to assist in developing procedures for determining wetland classifications, which will help effectively implement the law and these rules.

Comment: Mitigation exemptions should be minimal. Easements for mitigated wetlands should be permanent, as maturation of a restored wetland takes time. The mitigated wetland, in most cases, could be classified as a Class I, and undo the purpose of offsetting the loss of wetlands elsewhere. The exemption for a Class III wetland activity to be allowed because of “lack of practical alternative” can result in an increase loss of high quality wetlands. The Indiana Wildlife Federation is concerned that language in this section creates the potential for diminished standards of protection. (IWF)

Response: These rules neither reduce nor increase the scope of the exemptions as established by HEA 1798 and HEA 1277. “Easements”

are not required anywhere within the proposed rules. Deed restrictions are limited to the duration required for the maturation of the type of wetland mitigation attempted, which should adequately ensure that the mitigation wetland accomplishes its purpose. The class of a mitigation wetland is determined at the time of permitting, as necessitated by the mitigation ratio provisions. The exemption provisions in Rule 1 do not reference “lack of practical alternative.” The term “practical alternative” appears only in Rule 4, the individual permit. In effect a regulated activity can only occur in a Class III wetland if the activity lacks a practical alternative.

Comment: It is necessary to view this rule package as the first step in the process of crafting wetland regulation. More needs to be addressed to provide wetlands protection that meets the “purpose” of the regulation. (IWF)

Response: The department understands that more clarification for wetland categorization and other issues would be valuable and is working with science and policy advisors to develop non-rule policy documents and/or further rule revisions to help provide greater clarity.

Comment: The draft state regulated wetland rules before you today have been developed in haste and with little scientific basis. We recognize the limitations of the rulemaking per legislative mandate (HEA1798 and HEA1277). Nevertheless, the agency and this Board must strengthen the rules in order to fulfill the twin goals of the statutes: to promote a net gain in high quality isolated wetlands and to assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program. (SDC)

Response: The department has worked with interested parties to craft rules consistent with the schedule in the statute. These proposed rules have not attempted to provide more detail on wetland categorization and some other definitional issues because it was recognized by all that additional time beyond the statutory timeframe would be needed to effectively develop further guidance by rule or policy. The proposed rules however are effective in providing the required clarity in the applicability and content of the required general and individual permits. Through six policy workgroup meetings, the proposed rules have undergone considerable scrutiny in addition to the formal opportunities for public input. The department will continue to work with the public to provide guidance and, if needed, further rule revisions on matters not specifically addressed in this rulemaking.

Comment: The rules should require verification of those wetlands considered exempt by the owner to enable tracking the loss of wetlands. A provision must be added to the rules to clarify that the agency makes the final determination of exemption eligibility of a particular wetland. (SDC)

Response: The department agrees that exemption notification and verification would have benefits in verifying compliance with the permit requirements. However, the legislation does not specifically require such notification or verification. The department's existing enforcement authority would be triggered if a landowner filled a wetland that was not, in fact, exempt. While the department interprets the law to mean that the department makes the final determination regarding which wetlands and wetland activities are regulated by these rules, the comment illustrates that this issue could benefit from clarification in the rule language. Therefore we have edited 327 IAC 17-1-2 to add the following:

“The department may determine that a wetland or a wetland activity is subject to the provisions of this rule.”

Comment: There should be no exceptions to the mitigation requirements for Class II and III wetlands, and a conservation easement or deed restriction for Class II and III mitigation wetlands should be effective for a minimum period of fifty years. Mitigation wetlands begin to fully replace natural wetlands upon maturation, at which point

the current rules allow for their destruction. (SDC)

Response: The department believes that the limited circumstances in which the department would not require mitigation is a fact-based, site-specific issue that would best be handled through non-rule policy development. In regards to the deed restriction duration, the proposed rule represents a “compromise” position between those who advocated deed restrictions and those who adamantly opposed them. The purpose of the deed restriction is to a) notify subsequent property owners, and b) allow mitigation sites to mature before they can be altered. While 50 years was a rough estimate of the maturation time needed, the actual duration could be more finely tuned to the type of mitigation attempted – thus the current language. The actual maturation durations are a technical issue that would be best addressed through non-rule policy.

Comment: We also encourage the Board to add a requirement that public information will be available on applications to fill wetlands under the general permit and Class I general permit. (SDC)

Response: General permitting is different than individual permitting. The agency’s decision is made at the time of the general permit effective date, not on a case-by-case basis. This is evidenced by the fact that a landowner does not apply for a general permit, but notifies the department (i.e. the notice of intent) that she is planning on acting on the already issued general permit. The public involvement component for this decision is therefore this very rulemaking. Public input is not required on a case-by-case basis on each individual activity so long as the activity falls within the scope of the general permits, which have already been thoroughly reviewed and commented on by the public. Regarding availability of the information, the department will work to identify an administrative mechanism to make it convenient for the public to obtain information on notices of intent.

Comment: IDEM requested input on how to determine the “success” of mitigation efforts, but then responded that the performance standards we suggested are not required under the statute. Nor are they prohibited. Such standards enable objective determinations of “successful” mitigation, which is essential to meeting the goals of the wetlands legislation, particularly given the current lenient requirements for the long-term protection of mitigation wetlands. (SDC)

Response: As noted by the commentor, mitigation success criteria or performance standards were not required by HEA 1798 and HEA 1277. We agree that this does not prohibit their inclusion. However, mitigation success criteria are technical issues that should be discussed in greater detail by the Wetland Science Advisory Group and others and may be better suited for incorporation into a non-rule policy document or subsequent rulemaking. IDEM currently implements the Section 401 Water Quality Certification program for federal jurisdictional wetlands without detailed mitigation success criteria or performance standards in rule and can continue to do so for the isolated wetlands prior to further work with the public to craft written guidelines.

Comment: IDEM is pursuing development of a nonrule policy through a scientific advisory group to address the several key terms in the rules that are vaguely defined or lack definition altogether. Given the extent to which the definitions will determine implementation of the rules, we believe a nonrule policy is insufficient. Definitions for terms such as “fringe wetland” and “de minimis” as well as the wetland classifications should be incorporated into the rules prior to final adoption. Consistency with Section 404 U.S. Army Corps of Engineers definitions, while not required, would save time during the rulemaking as well as facilitate implementation of the permitting process. (SDC)

Response: Both “fringe” and “de minimis” have commonly understood meanings. Prior to the passage of HEA 1798 and HEA 1277, the wetland regulatory program operated without a formal “de minimis” definition in rules. Should confusion arise, the definitions for

these terms can be incorporated into a non-rule policy document or in a subsequent rulemaking.

327 IAC 17

SECTION 1. 327 IAC 17 IS ADDED TO READ AS FOLLOWS:

ARTICLE 17. WETLAND ACTIVITY PERMITS

Rule 1. State Regulated Wetlands

327 IAC 17-1-1 Purpose

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 1. (a) This article governs the issuance of general and individual permits for wetland activities in SRWs.

(b) The purpose of this article is to:

(1) promote a net gain in high quality isolated wetlands; and

(2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program.

(Water Pollution Control Board; 327 IAC 17-1-1)

327 IAC 17-1-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This article applies to persons proposing to undertake wetland activities in SRWs. *(Water Pollution Control Board; 327 IAC 17-1-2)*

327 IAC 17-1-3 Definitions

Authority: IC 13-11-2; IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4; IC 13-18-22

Sec. 3. The following definitions apply throughout this article:

(1) “Class I wetland” means an isolated wetland described by one (1) or both of the following:

(A) At least fifty percent (50%) of the wetland has been disturbed or affected by human activity or development by one (1) or more of the following:

(i) Removal or replacement of the natural vegetation.

(ii) Modification of the natural hydrology.

(B) The wetland supports only minimal wildlife or aquatic habitat or hydrologic function because the wetland does not provide critical habitat for threatened or endangered species listed in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at least one (1) of the following:

(i) The wetland is typified by low species diversity.

(ii) The wetland contains greater than fifty percent (50%) areal coverage of nonnative invasive species of vegetation.

(iii) The wetland does not support significant wildlife

or aquatic habitat.

(iv) The wetland does not possess significant hydrologic function.

(2) "Class II wetland" means either of the following:

(A) An isolated wetland that is not a Class I or Class III wetland.

(B) A type of wetland listed in subdivision (3)(B) that would meet the definition of Class I wetland if the wetland were not a rare or ecologically important type.

(3) "Class III wetland" means an isolated wetland:

(A) that:

(i) is located in a setting undisturbed or minimally disturbed by human activity or development; and

(ii) supports more than minimal wildlife or aquatic habitat or hydrologic function; or

(B) unless classified as a Class II wetland under subdivision (2)(B), that is of one (1) of the following rare and ecologically important types:

(i) Acid bog.

(ii) Acid seep.

(iii) Circumneutral bog.

(iv) Circumneutral seep.

(v) Cypress swamp.

(vi) Dune and swale.

(vii) Fen.

(viii) Forested fen.

(ix) Forested swamp.

(x) Marl beach.

(xi) Muck flat.

(xii) Panne.

(xiii) Sand flat.

(xiv) Sedge meadow.

(xv) Shrub swamp.

(xvi) Sinkhole pond.

(xvii) Sinkhole swamp.

(xviii) Wet floodplain forest.

(xix) Wet prairie.

(xx) Wet sand prairie.

(4) "Clean Water Act" refers to:

(A) 33 U.S.C. 1251 et seq.; and

(B) regulations adopted under 33 U.S.C. 1251 et seq.

(5) "Compensatory mitigation" means the:

(A) restoration; or

(B) creation;

of wetlands to offset or compensate for a loss of wetlands resulting from an authorized wetland activity. Wetlands enlargement, enhancement, and preservation may be considered compensatory mitigation on a case-by-case basis, particularly for Class III wetlands.

(6) "Dredged material" means material that is dredged or excavated from an isolated wetland.

(7) "Exempt isolated wetland" means the following:

(A) An isolated wetland that is a voluntarily created wetland unless:

(i) the wetland is:

(AA) approved by the department for compensatory

mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act or IC 13-18-22; or

(BB) reclassified as an SRW under IC 13-18-22-6(c); or
(ii) the owner of the wetland declares, by a written instrument:

(AA) recorded in the office of the recorder of the county or counties in which the wetland is located; and

(BB) filed with the department;

that the wetland is to be considered in all respects to be an SRW.

(B) An isolated wetland that exists as an incidental feature in or on any of the following:

(i) A residential lawn.

(ii) A lawn or landscaped area of a commercial or governmental complex.

(iii) Agricultural land.

(iv) A roadside ditch.

(v) An irrigation ditch.

(vi) A manmade drainage control structure.

(C) An isolated wetland that is a fringe wetland associated with a private pond.

(D) An isolated wetland that is, or is associated with, a manmade body of surface water of any size created by:

(i) excavating;

(ii) diking; or

(iii) excavating and diking;

dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes.

(E) An isolated wetland that is a Class I wetland with an area, as delineated, of one-half (½) acre or less.

(F) An isolated wetland that is a Class II wetland with an area, as delineated, of one-fourth (¼) acre or less.

(G) An isolated wetland that is located on land:

(i) subject to regulation under the United States Department of Agriculture wetland conservation rules, also known as Swampbuster (16 U.S.C. 3801-3862), because of voluntary enrollment in a federal farm program; and

(ii) used for agricultural or associated purposes allowed under the rules referred to in this clause.

(H) For purposes of clause (B), an isolated wetland exists as an incidental feature:

(i) if:

(AA) the owner or operator of the property or facility described in clause (B) does not intend the isolated wetland to be a wetland;

(BB) the isolated wetland is not essential to the function or use of the property or facility; and

(CC) the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; and

(ii) if the isolated wetland satisfies any other factors or criteria established in rules that are:

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(AA) adopted by the water pollution control board; and

(BB) not inconsistent with the factors and criteria described in this clause.

(J) The total acreage of Class I wetlands on a tract to which the exemption described in clause (E) may apply is limited to the larger of the following:

(i) The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (E).

(ii) Fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (E) but for the limitation of this subdivision.

(J) The total acreage of Class II wetlands on a tract to which the exemption described in clause (F) may apply is limited to the larger of the following:

(i) The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (F).

(ii) Thirty-three and one-third percent (33⅓%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (F) but for the limitation of this subdivision.

(K) An isolated wetland described in clause (E) or (F) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under clause (E) or (F) consistent with the applicable limitations described in clauses (I) and (J).

(8) "Isolated wetland" means a wetland that is not subject to regulation under Section 404(a) of the Clean Water Act.

(9) "Notice of intent" means a notice submitted by a person proposing the wetland activity as a prerequisite to applicability of a general permit under either 327 IAC 17-2 or 327 IAC 17-3. This notice must contain the following information:

(A) An identification of the wetlands to be affected by the wetland activity including the following:

(i) The location of the tract and location of the wetlands on the tract.

(ii) A delineation of all wetlands on the tract.

(iii) A classification of all SRWs on the tract.

(iv) A description of the proposed wetland activities and project at the site.

(v) For the purpose of making the determinations at subdivisions (7)(A) and (7)(K), section 4 of this rule, IC 13-18-22-2(c), IC 13-18-22-10, and IC 13-18-22-11, the person proposing the activity shall disclose dates for the following:

(AA) Actions that disturb or affect isolated wetlands under subdivision (1)(A) that occurred after January 1, 2004.

(BB) Wetland activities exempted by subdivision (7)(E) or (7)(F) that occurred after January 1, 2004.

(CC) Voluntary creation of isolated wetlands under subdivisions (7)(A) and (12).

(DD) Restoration of isolated wetlands under IC 13-18-22-2(c).

(EE) Filling, draining, or elimination by other means isolated wetlands not removed from the department's authority by IC 13-18-22-10.

(FF) Wetland activities that occurred on land previously exempted by subdivision (7)(G) if:

(aa) the land is no longer subject to; and

(bb) the wetland activities were not in compliance with;

the United States Department of Agriculture wetland conservation rules.

(B) A compensatory mitigation plan to reasonably offset the loss of wetlands allowed, unless an exception to mitigation has been granted by the department under section 6 of this rule.

(C) A statement signed by the applicant stating, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

(D) Correspondence from the United States Army Corps of Engineers (USACOE) that states that the wetland is not waters of the United States.

(10) "State regulated wetland" or "SRW" means an isolated wetland located in Indiana that is not an exempt isolated wetland.

(11) "Tract" means any area of land that is:

(A) under common ownership; and

(B) contained within a continuous border.

(12) "Voluntarily created wetland", for purposes of this article, means an isolated wetland that:

(A) was restored or created in the absence of a governmental order, directive, or regulatory requirement concerning the restoration or creation of the wetland; and

(B) has not been applied for or used as compensatory mitigation or another regulatory purpose that would have the effect of subjecting the wetland to regulation as waters by:

(i) the department; or

(ii) another governmental entity.

(13) "Waters" means the accumulations of water, surface and underground, natural and artificial, public and private, or a part of the accumulations of water that are wholly or partially within, flow through, or border upon

Indiana. The term does not include any of the following:

- (A) An exempt isolated wetland.
- (B) A private pond.
- (C) An off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.

The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C. 1362(7)), that are located in Indiana.

(14) "Waters of the United States" means waters described by 33 CFR 328.3(a)(3).

(15) "Wetland activity" means the discharge of:

- (A) dredged; or
- (B) fill;

material into an isolated wetland.

(16) "Wetlands" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. The term generally includes the following:

- (A) Swamps.
- (B) Marshes.
- (C) Bogs.
- (D) Similar areas.

(17) "Wetlands delineation" or "delineation", for purposes of this rule, means a technical assessment of:

- (A) whether a wetland exists on an area of land; and
- (B) if so, the type and quality of the wetland based on the presence or absence of wetlands characteristics, as determined consistently with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers.

(Water Pollution Control Board; 327 IAC 17-1-3)

327 IAC 17-1-4 Wetlands not considered disturbed or affected

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-22

Sec. 4. For purposes of the definitions of Class I wetland, Class II wetland, and Class III wetland, a wetland or setting is not considered disturbed or affected as a result of an action taken after January 1, 2004, for which a permit is required under IC 13-18-22 but has not been obtained.

(Water Pollution Control Board; 327 IAC 17-1-4)

327 IAC 17-1-5 Compensatory mitigation for state regulated wetlands

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-6; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 5. (a) Except as otherwise specified in subsection (b), compensatory mitigation, where required under this article, shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-Site Ratio	Off-Site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1 Nonforested 2 to 1 Forested	2 to 1 Nonforested 2.5 to 1 Forested
Class III	Class III	2 to 1 Nonforested 2.5 to 1 Forested	2.5 to 1 Nonforested 3 to 1 Forested

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) The off-site location of compensatory mitigation must be within the same:

- (1) eight (8) digit U.S. Geological Service hydrologic unit code; or
- (2) county;

as the isolated wetlands subject to the authorized wetland activity.

(d) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in SRWs. An exempt isolated wetland that is used to provide compensatory mitigation becomes a SRW.

(e) Mitigation plans required under section 3(9)(B) of this rule and 327 IAC 17-4-3(7) shall contain monitoring provisions that are sufficient to monitor the performance of the

compensatory mitigation wetland until it is demonstrated to successfully offset the loss of wetlands authorized by the permit.

(f) If, after a reasonable monitoring period, the department finds that the compensatory mitigation does not successfully offset the loss of wetlands authorized by the permit consistent with section 1(b)(2) of this rule, the department shall take actions as necessary to ensure compliance with this article. *(Water Pollution Control Board; 327 IAC 17-1-5)*

327 IAC 17-1-6 Exceptions to mitigation

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 6. At the discretion of the commissioner, the department may allow exceptions to compensatory mitigation in specific, limited circumstances. *(Water Pollution Control Board; 327 IAC 17-1-6)*

327 IAC 17-1-7 Exempt activities

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 7. The following wetland activities are exempt from permitting under this article:

(1) The discharge of any of the following in a de minimis amount:

- (A) Dirt.
- (B) Sand.
- (C) Rock.
- (D) Stone.
- (E) Concrete.
- (F) Other inert fill materials.

(2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:

- (A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;
- (B) otherwise effectuate environmental values; and
- (C) enhance those values where practicable.

(3) Any activity listed under Section 404(f) of the Clean Water Act, including the following:

(A) Normal farming, silviculture, and ranching activities, such as any of the following:

- (i) Plowing.
- (ii) Seeding.
- (iii) Cultivating.
- (iv) Minor drainage.
- (v) Harvesting for the production of food, fiber, and forest products.
- (vi) Upland soil and water conservation practices.

(B) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures, such as the following:

- (i) Dikes.
- (ii) Dams.
- (iii) Levees.
- (iv) Groins.
- (v) Riprap.
- (vi) Breakwaters.
- (vii) Causeways and bridge abutments or approaches.
- (viii) Transportation structures.

(C) Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches.

(D) Construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters.

(E) Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices to assure the following:

- (i) Flow and circulation patterns and chemical and biological characteristics of the navigable waters are

not impaired.

(ii) The reach of the navigable waters is not reduced.

(iii) Any adverse effect on the aquatic environment will be otherwise minimized.

(Water Pollution Control Board; 327 IAC 17-1-7)

327 IAC 17-1-8 Denial of a permit

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 8. The department may deny a permit for cause. The department must support a denial by a written statement of reasons. *(Water Pollution Control Board; 327 IAC 17-1-8)*

327 IAC 17-1-9 Notice of decision

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8

Affected: IC 4-21.5-3-5; IC 13-18-3; IC 13-18-4

Sec. 9. The department shall issue notices of decision in accordance with IC 4-21.5-3-5(b). *(Water Pollution Control Board; 327 IAC 17-1-9)*

Rule 2. General Permit for Minimal Impacts to State Regulated Wetlands

327 IAC 17-2-1 Purpose

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-4; IC 13-18-22-5; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 1. This rule establishes the following:

(1) A general permit to authorize wetland activities with minimal impact to Class I and Class II wetlands that are SRWs.

(2) Procedures and criteria for the review of applications for wetland activity general permits for minimal impacts to SRWs.

(Water Pollution Control Board; 327 IAC 17-2-1)

327 IAC 17-2-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4; IC 14-34

Sec. 2. (a) This rule applies to persons proposing to undertake wetland activities in Class I and Class II SRWs that will have minimal impacts, as described in this rule.

(b) Wetland activities covered by this rule include the following:

(1) Activities related to the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill or of any currently serviceable structure or fill authorized by this rule, 327 IAC 17-3, or 327 IAC 17-4, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or

current construction codes or safety standards that are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from the repair, rehabilitation, or replacement are minimal. As used in this subdivision, "currently serviceable" means usable as is or with some maintenance, but not so degraded as to essentially require reconstruction. A permit issued under this subdivision authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two (2) years of the date of their destruction or damage. In cases of catastrophic events, such as tornadoes, this two-year limit may be waived by the commissioner, provided the permittee can demonstrate funding, contract, or other similar delays.

(2) Discharges of dredged or fill material, including excavation, into SRWs to remove accumulated sediments and debris in the vicinity of, and within, existing structures, for example, bridges, culverted road crossings, water intake structures, and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the wetland in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than two hundred (200) feet in any direction from the structure. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the commissioner under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the commissioner.

(3) Discharges of dredged or fill material, including excavation, into SRWs, for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a SRW. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without permit provided the uplands are restored to their original pre-event location. A permit issued under this subdivision is for the activities in SRWs associated with the replacement of the uplands.) The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The department retains the right to determine the extent of the preexisting conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent wetland is limited to:

- (A) fifty (50) cubic yards below the plane of the ordinary high water mark; and
- (B) the amount necessary to restore the preexisting bottom contours of the wetland.

The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with subdivision (11) to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes. Any work authorized by this permit must not cause more than minimal degradation of water quality or increase flooding. A permit issued under this subdivision authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the 327 IAC 17-1-7(3)(B) exemption for maintenance.

(4) Fish and wildlife harvesting devices and activities, such as duck blinds. A permit issued under this subdivision does not authorize impoundments and semi-impoundments of waters of the state for the culture or holding of motile species.

(5) The use of devices designed to measure and record scientific data, such as the following:

- (A) Staff gauges.
- (B) Water recording devices.
- (C) Water quality testing and improvement devices.
- (D) Similar structures.

(6) Survey activities including core sampling, seismic exploratory operations, plugging of seismic shotholes and other exploratory-type boreholes, soil survey, sampling, and historic resources. The following are not authorized under this subdivision:

- (A) Discharges and structures associated with the recovery of historic resources.
- (B) Drilling and the discharge of excavated material from test wells for oil and gas exploration. However, the plugging of such wells is authorized.
- (C) Fill placed for roads, pads, and other similar activities.
- (D) Permanent structures.

The discharge of drilling mud and cuttings may require a permit under 327 IAC 5.

(7) Activities required for the construction, maintenance, and repair of utility lines and associated facilities in SRWs as follows:

(A) The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all SRWs, provided there is no change in preconstruction contours. As used in this clause, a "utility line" means any:

- (i) pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose; and

(ii) cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication.

Material resulting from trench excavation may be temporarily side cast (up to three (3) months) into SRWs, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The commissioner may extend the period of temporary side casting not to exceed a total of one hundred eighty (180) days, where appropriate. In wetlands, the top six (6) inches to twelve (12) inches of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain SRWs, for example, backfilling with extensive gravel layers, creating a french drain effect. For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the SRWs through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each SRW.

(B) The construction, maintenance, or expansion of a substation facility associated with a power line or utility line, provided that the activity does not result in the loss of greater than one-half (½) acre of SRWs.

(C) The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all SRWs, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(D) The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in SRWs, provided the discharges do not cause the loss of greater than one-half (½) acre of SRWs. Access roads shall be the minimum width necessary. Access roads must be constructed so that the length of the road minimizes the adverse effects on SRWs and as near as possible to preconstruction contours and elevations, for example, at grade corduroy roads or geotextile/gravel roads. Access roads constructed above preconstruction contours and elevations in SRWs must be properly bridged or culverted to maintain surface flows. As used in this clause, "utility line" does not include activities that drain a SRW, such as drainage tile or french drains; however, the term does include pipes conveying drainage from another area. For purposes of this clause, the loss of SRWs includes the filled area plus SRWs that are adversely affected by flooding, excavation, or drainage as a result of the project.

Activities authorized by clauses (A) through (C) may not exceed a total of one-half (½) acre loss of SRWs. SRWs temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, are not included in the

calculation of permanent loss of SRWs. This includes temporary construction mats, for example, timber, steel, and geotextile, used during construction and removed upon completion of the work. Where certain functions and values of SRWs are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level. Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of SRWs that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this rule. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions.

(8) Return water from upland, contained dredged material disposal area. The dredging itself may require a permit under IC 13-18-22-1. The return water from a contained disposal area is administratively defined as a discharge of dredged material, even though the disposal itself occurs on the upland and does not require an IC 13-18-22-1 permit.

(9) Activities in SRWs associated with the restoration of former wetlands, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, and the restoration and enhancement of streams and open water areas as follows:

(A) The activity is conducted on any of the following:

(i) Nonfederal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS).

(ii) Reclaimed surface coal mine lands subsequent to reclamation bond release and termination of OSM/IDNR jurisdiction under the Surface Mining Control and Reclamation Act and IC 14-34. The future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, naturally due to hydrologic or topographic features, or for a mitigation bank.

(iii) Other public or private lands.

(B) Planting of only native species shall occur on the site.

Activities authorized by this subdivision include, to the

extent that a permit is required under IC 13-18-22-1, the removal of accumulated sediments; the installation, removal, and maintenance of dikes and berms; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove nonnative invasive, exotic, or nuisance vegetation; and other related activities. This subdivision does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this subdivision authorizes the relocation of wetlands on the project site provided there are net gains in aquatic resource functions and values. For example, this subdivision may authorize the creation of an open water impoundment in an emergent wetland provided the emergent wetland is replaced by creating that wetland type on the project site. For enhancement, restoration, and creation projects conducted under item (iii), this subdivision does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases, a separate permit would be required for any reversion if not otherwise exempt under this article. For restoration, enhancement, and creation projects conducted under items (i) and (ii), this subdivision also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use, that is, prior to the restoration, enhancement, or creation activities if a permit is otherwise required under this article for such reversion activities. The reversion must occur within five (5) years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after a permit issued under this subdivision expires. This subdivision also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require an IC 13-18-22-1 permit). The five-year reversion limit does not apply to agreements without time limits reached under item (i). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity, the permittee or the appropriate federal or state agency must notify the commissioner and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever regulatory requirements are applicable at that future date.

(10) Discharges of dredged or fill material and maintenance activities that are associated with moist soil man-

agement for wildlife performed on federally-owned or managed property, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include the following:

- (A) The repair or maintenance of dikes.
- (B) Plowing or discing to impede succession, prepare seed beds, or establish fire breaks.

Sufficient vegetated buffers must be maintained adjacent to all open waterbodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This subdivision does not authorize the construction of new dikes, roads, water control structures, etc., associated with the management areas. This subdivision does not authorize converting wetlands to uplands, impoundments, or other open waterbodies.

(11) New construction, agriculture, and mining activities. The following activities are authorized:

- (A) New construction activities associated with the construction or installation of new facilities or structures. Typically, these include residential, commercial, industrial, institutional, and recreational activities. These activities include:

- (i) filling and grading;
- (ii) dredging;
- (iii) stormwater, sediment, and erosion control activities; and
- (iv) roads, infrastructures, and utilities;

provided the individual and cumulative impacts are minimal.

- (B) Agriculture and mining activities. These include work or discharges of dredged or fill material associated with the following:

- (i) Buildings or work pads.
- (ii) Stockpiling of material.
- (iii) Staging, loading, and unloading areas.
- (iv) Roads.
- (v) Land leveling.
- (vi) Berms, dikes, dams, and ditch construction.
- (vii) Drainage facilities.
- (viii) Erosion and water control activities.

This subdivision does not affect those agricultural and mining activities that are exempt in accordance with 327 IAC 17-1-7.

- (C) Discharges of dredged or fill material authorized by this subdivision are limited to one-tenth (0.1) acre or less of SRWs.

- (D) Authorization of activities under this rule does not substitute for any separate authorizations required by other local, state, or federal requirements.

- (E) Activities that the department determines to have the potential to cause unacceptable adverse impacts on aquatic resources or other public interest factors are not authorized by this subdivision.

(F) The department may on a case-by-case basis require a 327 IAC 17-3 or 327 IAC 17-4 permit. The department will notify the applicant that the project does not qualify for a general permit under this rule and instruct the applicant on the procedures to seek authorization under the 327 IAC 17-3 or 327 IAC 17-4 permit. The department may also require a 327 IAC 17-3 or 327 IAC 17-4 permit for any:

- (i) after-the-fact applications; or
 - (ii) unauthorized activity;
- or both, regardless of whether or not the discharge meets the area limitation specified in clause (C).

(c) Wetland activities that would have more than minimal impacts to water quality, either viewed individually or collectively with other projects that may affect the same waterbody affected by the proposed project, are excluded. (*Water Pollution Control Board; 327 IAC 17-2-2*)

327 IAC 17-2-3 Notice of intent requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. A person proposing a wetland activity must submit a notice of intent to the department as a prerequisite to applicability of the minimal impact general permit. (*Water Pollution Control Board; 327 IAC 17-2-3*)

327 IAC 17-2-4 General conditions

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The recipient of the general permit shall comply with the following general conditions:

- (1) Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
- (2) Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date. The permittee shall deposit any dredged material in a contained upland disposal area to prevent sediment runoff to any waterbody. Sampling may be required to determine if the dredged sediment is contaminated.
- (3) No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the wetland, including those species that normally migrate through the area.
- (4) Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
- (5) The permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality.
- (6) No activity is authorized under this general permit

where state endangered, threatened, or rare species are documented on a permanent or seasonal basis within a one-half (½) mile radius of the proposed project site by the Indiana Natural Heritage Data Center.

(7) Upon completion of the wetland activity and any required mitigation, the permittee shall submit a signed certification to the department. The certification will include the following:

(A) A statement that:

- (i) the authorized work was done in accordance with the department authorization, including any conditions; and
- (ii) any required mitigation was completed in accordance with the permit conditions.

(B) The signature of the permittee certifying the completion of the work and mitigation.

(8) More than one (1) general permit provision may be used for a single and complete project to the extent applicable, provided that the acreage loss of SRWs authorized by all general permit provisions utilized does not exceed the acreage limit of the general permit provision with the highest specified acreage limit.

(9) No activity may occur in the proximity of a public water supply intake, except where the activity is for repair of the public water supply intake structures.

(10) No activity, including structures and work in SRWs or discharges of dredged or fill material, may consist of unsuitable material, for example:

- (A) trash;
- (B) debris;
- (C) car bodies; and
- (D) asphalt;

and material used for construction or discharged must be free from toxic pollutants in toxic amounts.

(11) When determining compensatory mitigation to reasonably offset the loss of wetlands allowed by the general permit, the commissioner will consider the following factors:

(A) The commissioner will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(B) Permittees may propose the use of mitigation banks to meet the wetland mitigation requirements.

(C) In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing or complying, or both, with the mitigation plan.

(12) Activities in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

(13) Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

(14) Critical resource waters include critical habitat for federally listed threatened and endangered species, state natural heritage sites, outstanding national resource

waters, water pollution control board designated waters, for example, outstanding state or national resource waters, or both, exceptional use waters, outstanding state protected wetland, or other waters officially designated by the state as having particular environmental or ecological significance and identified by the commissioner after notice and opportunity for public comment.

(A) Except as noted below, discharges of dredged or fill material into SRWs are not authorized by section 2(b)(7), 2(b)(8), or 2(b)(11) of this rule for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(B) For section 2(b)(1), 2(b)(9), 2(b)(10), and 2(b)(11) of this rule, the commissioner may authorize activities under these general permits only after it is determined that the impacts to the critical resource waters will be no more than minimal.

(15) For purposes of this general condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps. Discharges of dredged or fill material into SRWs within the mapped 100-year floodplain, resulting in permanent abovegrade fills, are not authorized by general permit.

(16) The permittee shall clearly mark the construction limits shown in the plans at the tract during construction.

(17) The permittee shall allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials to:

(A) enter upon the tract;

(B) have access to and copy at reasonable times any records that must be kept under the conditions of the permit;

(C) inspect, at reasonable times any:

(i) monitoring or operational equipment or method;

(ii) collection, treatment, pollution management, or discharge facility or device;

(iii) practices required by the permit; and

(iv) wetland mitigation site; and

(D) sample or monitor any discharge of pollutants or any mitigation site.

(18) Any activity involving fill that is associated with additional impacts to waters of the state, such as dredging, excavation, or damming, is not authorized by a general permit unless the total area of wetland affected is less than or equal to the area allowed by the general permit.

(19) Execute the project as proposed in the notice of intent.

(20) Implement the mitigation plan submitted with the notice of intent.

(21) Complete all activities necessary to construct the mitigation wetland within one (1) year of the effective date of this general permit, unless the department grants a written extension upon request.

(22) Clearly identify, on the tract, all mitigation wetlands

after construction of the mitigation wetlands. Install survey markers to identify the boundaries of the wetlands. If the mitigation wetlands being constructed are adjacent to or near existing wetlands, then the survey markers must distinguish the constructed wetland from the existing wetland.

(23) Protect all areas upon which a Class II or Class III mitigation wetland is to be created with a conservation easement or deed restriction. These areas shall be protected as wetlands for the length of time consistent with the time required for maturation of the wetland type being restored or created. The discharge of pollutants, including fill material, in them or their excavation shall be prohibited. A copy of the signed and recorded modification to the deed shall be filed with the department within sixty (60) days of the applicant's release from monitoring requirements.

(24) An applicant establishing a Class I mitigation wetland must file a signed and recorded environmental notice, which describes the compensatory mitigation contained in the mitigation plan, with the department within sixty (60) days of the applicant's release from monitoring requirements.

(Water Pollution Control Board; 327 IAC 17-2-4)

327 IAC 17-2-5 Review requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department shall review the notice of intent to determine whether the proposed activity is within the scope of the minimal impact general permit. If the department finds that the proposed activity is not within the scope of the minimal impact general permit, the department shall notify the person proposing the wetland activity that a permit is required under 327 IAC 17-3 or 327 IAC 17-4, as applicable.

(Water Pollution Control Board; 327 IAC 17-2-5)

327 IAC 17-2-6 Review deadlines

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8

Affected: IC 13-18-3; IC 13-18-4

Sec. 6. A permit to undertake a wetland activity under this rule is considered to have been issued to any applicant on the thirty-first day after the department receives a notice of intent submitted under section 3 of this rule if the department has not:

(1) previously authorized the wetland activity; or

(2) notified the applicant per the review requirements in section 5 of this rule.

(Water Pollution Control Board; 327 IAC 17-2-6)

Rule 3. Permit for Impacts in Class I State Regulated Wetlands

327 IAC 17-3-1 Purpose

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

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Sec. 1. This rule establishes procedures and criteria for the review of applications for wetland activity permits for significant impacts to Class I SRWs. (*Water Pollution Control Board; 327 IAC 17-3-1*)

327 IAC 17-3-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This rule applies to persons proposing to undertake wetland activities in Class I SRWs that will have significant impacts. (*Water Pollution Control Board; 327 IAC 17-3-2*)

327 IAC 17-3-3 Notice of intent requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. A person proposing a wetland activity must submit a notice of intent to the department as a prerequisite to applicability of the Class I general permit. (*Water Pollution Control Board; 327 IAC 17-3-3*)

327 IAC 17-3-4 General conditions

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The recipient of this Class I general permit shall comply with the general conditions at 327 IAC 17-2-4. (*Water Pollution Control Board; 327 IAC 17-3-4*)

327 IAC 17-3-5 Review requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department shall review the notice of intent and notify the applicant if the proposed activity is outside the scope of the applicability of the Class I general permit. (*Water Pollution Control Board; 327 IAC 17-3-5*)

327 IAC 17-3-6 Review deadlines

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. A permit to undertake a wetland activity in a Class I wetland under this rule is considered to have been issued to any applicant on the thirty-first day after the department receives a notice of intent submitted under section 3 of this rule if the department has not:

- (1) previously authorized the wetland activity; or
- (2) notified the applicant per the review requirements in section 5 of this rule.

(*Water Pollution Control Board; 327 IAC 17-3-6*)

Rule 4. Individual Permit for Wetland Activities in Class II and Class III State Regulated Wetlands

327 IAC 17-4-1 Purpose

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. This rule governs the issuance of wetland activity individual permits and establishes procedures and criteria for the review of applications for wetland activity individual permits in Class III and certain Class II wetlands. (*Water Pollution Control Board; 327 IAC 17-4-1*)

327 IAC 17-4-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This rule applies to persons who propose to undertake wetland activities in a:

- (1) Class III wetland; and
- (2) Class II wetland, except wetland activities that are regulated by a minimal impact general permit under 327 IAC 17-2.

(*Water Pollution Control Board; 327 IAC 17-4-2*)

327 IAC 17-4-3 Permit application requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. A person proposing a wetland activity is required to submit to the department an application that includes the following:

- (1) Applicant information.
- (2) Agent information if applicable.
- (3) Purpose and description of activity.
- (4) Current and proposed use of the tract.
- (5) Correspondence from the USACOE that states that the wetland is not waters of the United States.
- (6) Identification of the wetlands to be affected by the wetland activity including the following:

- (A) The location of the tract and location of the wetlands on the tract.
- (B) A delineation of all wetlands on the tract.
- (C) A classification of all SRWs on the tract.
- (D) For the purpose of making the determinations at 327 IAC 17-1-4, 327 IAC 17-1-3(7)(A), 327 IAC 17-1-3(7)(K), IC 13-18-22-2(c), IC 13-18-22-10, and IC 13-18-22-11, the person proposing the activity shall disclose dates for the following:

- (i) Actions that disturb or affect isolated wetlands under 327 IAC 17-1-3(1)(A) that occurred after January 1, 2004.
- (ii) Wetland activities exempted by 327 IAC 17-1-3(7)(E) or 327 IAC 17-1-3(7)(F) that occurred after January 1, 2004.
- (iii) Voluntary creation of isolated wetlands under 327 IAC 17-1-3(7)(A) and 327 IAC 17-1-3(12).
- (iv) Restoration of isolated wetlands under IC 13-18-22-2(c).
- (v) Filling, draining, or elimination by other means isolated wetlands not removed from the department's authority by IC 13-18-22-10.
- (vi) Wetland activities that occurred after January 1,

2004, on land previously exempted by 327 IAC 17-1-3(7)(G) if the land is no longer subject to United States Department of Agriculture wetland conservation rules under IC 13-18-22-11.

(7) A compensatory mitigation plan to reasonably offset the loss of wetlands allowed, unless an exception to mitigation has been granted by the department under 327 IAC 17-1-6.

(8) The applicant shall demonstrate, as a prerequisite to the issuance of the permit, that the wetland activity is as follows:

(A) Without a reasonable alternative under section 8 of this rule.

(B) Reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located under section 9 of this rule.

(C) For a Class III wetland, as follows:

(i) Without a practical alternative.

(ii) Will be accompanied by taking steps that are practicable and appropriate to minimize potential adverse impacts of the discharge on the aquatic ecosystem of the wetland.

(D) For a Class III wetland, an applicant's demonstration in clause (C)(i) and (C)(ii) is not satisfied by the demonstrations in section 8 or 9 of this rule.

(9) A statement signed by the applicant stating, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

(Water Pollution Control Board; 327 IAC 17-4-3)

327 IAC 17-4-4 Conditions

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The department shall condition an approval as necessary to do the following:

(1) Achieve the goals of the permitting program under 327 IAC 17-1-1.

(2) Provide compensatory mitigation to reasonably offset the loss of wetlands allowed by the permits except as provided in 327 IAC 17-1-6.

(Water Pollution Control Board; 327 IAC 17-4-4)

327 IAC 17-4-5 Review requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8

Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department may notify the applicant that the completed application is deficient. If the department fails to

give notice to the applicant under this section not later than fifteen (15) days after the department's receipt of the completed application, the application is considered not to have been deficient. After receipt of a notice under this section, the applicant may submit an amended application that corrects the deficiency. The department shall make a decision to issue or deny an individual permit under the amended application within a period that ends a number of days after the date the department receives the amended application equal to the remainder of:

(1) one hundred twenty (120) days; minus

(2) the number of days the department held the initial application before giving a notice of deficiency under this section.

(Water Pollution Control Board; 327 IAC 17-4-5)

327 IAC 17-4-6 Review deadlines

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8

Affected: IC 13-18-3; IC 13-18-4

Sec. 6. Subject to section 5 of this rule, the department shall make a decision to issue or deny an individual permit not later than one hundred twenty (120) days after receipt of the completed application. If the department fails to make a decision on a permit application by the deadline under this section or section 5 of this rule, a permit is considered to have been issued by the department in accordance with the application. *(Water Pollution Control Board; 327 IAC 17-4-6)*

327 IAC 17-4-7 Denial of a permit

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8

Affected: IC 13-18-3; IC 13-18-4

Sec. 7. The department may deny an application for a permit for cause before the period in section 5 or 6 of this rule expires. The department must support a denial by a written statement of reasons. *(Water Pollution Control Board; 327 IAC 17-4-7)*

327 IAC 17-4-8 Reasonable alternative demonstration

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 8. A wetland activity is considered to be without reasonable alternative if:

(1) an executive of the county or municipality in which the wetland is located issues a resolution stating that the wetland activity is without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located;

(2) a local government entity that has authority over the proposed use of the property on which the wetland is located issues a permit or other approval stating that the wetland activity is without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; or

(3) the department, in the absence of a local determination under this section, determines the wetland activity is

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without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located.

(Water Pollution Control Board; 327 IAC 17-4-8)

327 IAC 17-4-9 Reasonably necessary or appropriate demonstration

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7

Affected: IC 13-18-3; IC 13-18-4

Sec. 9. A wetland activity is considered to be reasonably necessary or appropriate if:

- (1) an executive of the county or municipality in which the wetland is located issues a resolution stating that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located;
- (2) a local government entity, having authority over the proposed use of the property on which the wetland is located, issues a permit or other approval stating that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; or
- (3) the department, in the absence of a local determination under this section, makes a determination that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located.

(Water Pollution Control Board; 327 IAC 17-4-9)

327 IAC 17-4-10 Public notice of applications for individual permits for wetland activities in Class II and Class III state regulated wetlands

Authority: IC 13-18-22-3; IC 13-18-22-8

Affected: IC 4-21.5-3-5

Sec. 10. (a) Except as provided in subsection (f) [*sic.*], the commissioner shall provide public notice of and an opportunity to comment on complete applications submitted to the department under this rule.

(b) The public notice must contain the following information:

- (1) The applicable statutory and regulatory authority.
- (2) The name and address of the applicant and, if any, the applicant's agent.
- (3) The name, address, and telephone number of the department's employee who may be contacted concerning the application.
- (4) The location of the tract.
- (5) A brief description of the proposed project, including the following:
 - (A) The purpose and a description of the wetland activity.
 - (B) The current and proposed use of the tract.
 - (C) A summary of the number, size, and class of the SRW on the tract.

(D) A description of the compensatory mitigation proposed by the applicant.

(6) A statement telling where the public may view or obtain a copy of the application.

(7) A statement that the comment period deadline is thirty (30) calendar days from the date of mailing of the public notice unless otherwise specified.

(8) A statement that any person may request in writing that a public hearing or meeting be held to consider the application.

(c) The department shall provide notice of a complete application to the following:

(1) The applicant.

(2) Adjacent property owners and other potentially affected persons, as provided by the applicant.

(3) The following agencies:

(A) The department of natural resources.

(B) The United States Fish and Wildlife Service.

(C) Affected county and local plan commissions.

(4) Any person who requests copies of public notices of applications.

(d) The department shall consider comments received during any public comment period under this section in making a determination under this rule. The department may hold a public hearing in response to a request for a public hearing under subsection (b). *(Water Pollution Control Board; 327 IAC 17-4-10)*

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on February 9, 2005 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on a proposed new rule concerning wetland activity permits.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. 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 Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 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 or (317) 232-6565 (TDD). 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 Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method
Deputy Commissioner
Office of Water Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule LSA Document #04-256 DIGEST

Amends 329 IAC 10-2-112 and adds 329 IAC 10-11-6.5 concerning a minor modification to a municipal solid waste landfill permit for research, development, and demonstration and to incorporate federal language, with minor wording changes, into the Indiana rules. Effective 30 days after filing with the secretary of state.

HISTORY

Notice of Comment Period under IC 13-14-9-7: October 1, 2004, Indiana Register (28 IR 417).

Notice of First Hearing: October 1, 2004, Indiana Register (28 IR 419).

Date of First Hearing: November 16, 2004.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

Because this proposed rule is not substantively different from the draft rule published on October 1, 2004, at 28 IR 417, 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 October 1, 2004, through November 1, 2004, on IDEM's draft rule language. No comments were received during the comment period under IC 13-14-9-7.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On November 16, 2004, the solid waste management board (board) conducted the first public hearing/board meeting concerning a minor modification to a municipal solid waste landfill permit for research, development, and demonstration. No public comments were made at the first hearing.

329 IAC 10-2-112 **329 IAC 10-11-6.5**

SECTION 1. 329 IAC 10-2-112 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-112 "Minor modification of solid waste land disposal facilities" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 112. (a) "Minor modification of solid waste land disposal facilities" means any modification in a permitted solid waste land disposal facility that would not:

(1) increase the:

(A) facility's permitted capacity to dispose of solid waste by the lesser of:

(A) (i) more than ten percent (10%); or

(B) (ii) five hundred thousand (500,000) cubic yards; or

(2) increase the (B) area within the permitted solid waste boundary by more than one (1) acre; or

(3) (2) include those items determined to be:

(A) insignificant modifications by under 329 IAC 10-3-3(b) or by the commissioner; or

(4) include those items determined to be (B) major modifications by under section 109 of this rule.

(b) A minor modification may include the addition or modification of: **includes, but is not limited to, the following:**

(1) An alternative daily cover (ADC) under 329 IAC 10-20-14.1(e).

(2) A baled waste management plan under 329 IAC 10-20-31(3). and

(3) A borrow pit:

(A) owned by the owner, operator, or permittee;

(B) not permitted by the department before April 1, 2004; and

(C) located on-site or on property adjoining the facility.

(4) **The run-on control systems, the liquids restriction, and the final cover as allowed under the research, development, and demonstration minor permit modification in 329 IAC 10-11-6.5.**

(Solid Waste Management Board; 329 IAC 10-2-112; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004)

SECTION 2. 329 IAC 10-11-6.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-11-6.5 Research, development, and demonstration minor modification application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 6.5. (a) Except as provided in subsection (f), the

commissioner may issue a minor modification for research, development, and demonstration for a new MSWLF, existing MSWLF, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods that vary from either or both of the following criteria provided that the MSWLF has a leachate collection system designed and constructed to maintain less than twelve (12) inches depth of leachate on the liner:

- (1) The run-on control system in 329 IAC 10-20-11(a)(1).
- (2) The liquids restrictions in 329 IAC 10-20-27.

(b) The commissioner may issue a minor modification for research, development, and demonstration for a new MSWLF, existing MSWLF, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods that vary from the final cover requirements at 329 IAC 10-22-6, provided the MSWLF owner/operator demonstrates that the percolation of liquid through the alternative cover system will not cause contamination of ground water or surface water or cause leachate depth on the liner to exceed twelve (12) inches.

(c) Any MSWLF permit minor modification issued under this section must also meet the requirements in section 6 of this rule and must include such terms and conditions at least as protective as this article to assure protection of human health and the environment. The minor modification issued under this section shall do the following:

- (1) Provide for the construction and operation of such facilities as necessary, for not longer than three (3) years, unless renewed as provided in subsection (e).
- (2) Provide that the MSWLF must receive only those types and quantities of municipal solid waste and nonhazardous wastes that the commissioner deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process.
- (3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the commissioner with respect to the operation of the facility.
- (4) Require the owner or operator of the MSWLF with a minor modification under this section to submit an annual report to the commissioner showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results, as well as any other operating information specified by the commissioner in the minor modification given under this section.
- (5) Require compliance with all requirements, as applicable, under this article.

(d) The commissioner may revoke or amend the minor modification issued under this section and require immediate termination of all operations at the facility allowed by the minor modification issued under this section or other

corrective measures at any time the commissioner determines that the overall goals of the project are not being attained, including protection of human health or the environment.

(e) Any minor modification issued under this section shall not exceed a term of three (3) years, and each renewal of this minor modification may not exceed a term of three (3) years. The following apply to this section:

- (1) The total term for a minor modification issued under this section, including all renewals issued under this section, must not exceed twelve (12) years.
- (2) As part of the minor modification renewal application under this section, the owner or operator shall provide the following:
 - (A) A detailed assessment of the approved research, development, and demonstration project showing the status with respect to achieving project goals.
 - (B) A list of problems and status with respect to problem resolutions.
 - (C) Any other information that the commissioner determines necessary to assure protection of human health or the environment for the minor modification renewal issued under this section.

(f) An owner or operator of a MSWLF:

- (1) operating under an exemption set forth in 40 CFR 258.1(f)(1); or
- (2) that disposes of twenty (20) tons of municipal solid waste per day or less based on an annual average;

is not eligible for a minor modification under this section. (Solid Waste Management Board; 329 IAC 10-11-6.5)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on February 15, 2005 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 the proposed amendments to 329 IAC 10.

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 or (317) 233-6565 (TDD). 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, Eleventh Floor, 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.

Tim Method
Deputy Commissioner
Office of Land Quality

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Proposed Rule
LSA Document #04-269

DIGEST

Adds 460 IAC 3.5-2-3 to require providers to submit a closeout report to provide actual cost information that is not currently available, which will assist the division in its required annual review of adult day service reimbursement rates. Effective 30 days after filing with the secretary of state.

460 IAC 3.5-2-3

SECTION 1. 460 IAC 3.5-2-3 IS ADDED TO READ AS FOLLOWS:

460 IAC 3.5-2-3 Annual review of adult day service reimbursement rates

Authority: IC 12-8-8-4
Affected: IC 12-7-2-39; IC 12-7-2-61; IC 12-9-2-6

Sec. 3. As part of the review required in section 2 of this rule, each provider shall submit a closeout report in the format prescribed by the state within ninety (90) days of the end of their provider contract period. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 3.5-2-3*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 27, 2005 at 11:00 a.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 to require providers to submit a closeout report to provide actual cost information that is not currently available, which will assist the division in its required annual review of adult day service reimbursement rates. 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 #04-277

DIGEST

Adds 511 IAC 6-7.1, effective with the graduating class of 2009, to adopt new minimum high school graduation requirements, adopt new Core 40 diploma requirements, and adopt Core 40 with academic honors and Core 40 with technical honors diplomas to replace the current academic honors diploma. Effective 30 days after filing with the secretary of state.

511 IAC 6-7.1

SECTION 1. 511 IAC 6-7.1 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6. DRIVER EDUCATION; GRADUATION REQUIREMENTS; NONSTANDARD PROGRAMS; HIGH ABILITY STUDENTS; POSTSECONDARY ENROLLMENT

Rule 7.1. Graduation Requirements for Students Who Begin High School in the 2005-2006 School Year and Subsequent Years

511 IAC 6-7.1-1 Definitions

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5-7-2
Affected: IC 20-10.1-4-5; IC 20-10.1-4.5-2

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

(b) "Board" means the Indiana state board of education.

(c) "Career-academic sequence" means a flexible se-

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quence of career-technical and academic courses that:

- (1) help a student explore and prepare for a specific career area or group of related occupations;
- (2) are selected and defined by school corporations;
- (3) include progressive exposure to the world of work, with some leading to a certificate recognized by business and industry.

As a student progresses in a sequence and learns more about a specific career area, the student may remain in the same career area throughout high school, explore an additional career area, or enroll in a multicredit career-technical program designed to help the student develop knowledge and skills related to a specific occupation.

(d) “Credit” means satisfactory completion of a course that meets the following requirements:

- (1) The course is an approved course under 511 IAC 6.1-5.1.
- (2) The course is consistent with Indiana academic standards.
- (3) The course includes a minimum of two hundred fifty (250) minutes of instruction per week for one (1) semester.

Multiple credit may not be awarded for the same course unless the approved course description permits multiple credits to be awarded.

(e) “High school diploma” means a certificate of graduation issued by the governing body of a school corporation certifying that the student has satisfied the minimum requirements for graduation from a high school of the school corporation.

(f) “Semester” means one-half (½) of a regular school year. (*Indiana State Board of Education; 511 IAC 6-7.1-1*)

511 IAC 6-7.1-2 Minimum standards

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5.7-2

Affected: IC 20-10.1-4-5; IC 20-10.1-4.5-2; IC 20-10.1-16-13

Sec. 2. The following general principles are a guide to school corporations in certifying to the board that students are qualified for high school graduation:

- (1) The standards in section 4 of this rule are minimum requirements for granting a high school diploma. School corporations may establish graduation requirements that exceed these minimum standards, in which case the local standards take precedence.
- (2) The board recognizes only high school diplomas conferred by schools accredited by the board.

(*Indiana State Board of Education; 511 IAC 6-7.1-2*)

511 IAC 6-7.1-3 Semester requirements; waiver

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5.7-2

Affected: IC 20-10.1-4-5; IC 20-10.1-4.5-2; IC 20-10.1-16-13

Sec. 3. (a) To be graduated from a high school, a pupil

shall attend at least seven (7) semesters in grades 9 through 12.

(b) A school corporation may, under procedures adopted by the governing body, waive the seven (7) semester requirement if:

- (1) failure to waive the requirement would effectively prevent the student from graduating from high school; or
- (2) the student likely would have qualified for a gifted and talented education program waiver had it been available, and the waiver is for the purpose of:

(A) enrolling in an accredited postsecondary educational institution, and the student has been accepted for enrollment; or

(B) furthering the student’s education through military enlistment, and the student has an enlistment contract that contains an educational component.

(c) A decision of a high school to deny a request for a waiver may be appealed to the superintendent, and a decision of a superintendent to deny a request for a waiver may be appealed to the governing body of the school corporation.

(d) Local decisions on requests for waivers shall be documented. (*Indiana State Board of Education; 511 IAC 6-7.1-3*)

511 IAC 6-7.1-4 Minimum required and elective credits

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5.7-2

Affected: IC 20-10.1-4-5; IC 20-10.1-4-7; IC 20-10.1-4.5-2; IC 20-10.1-16-13

Sec. 4. (a) For a student who enters high school in the 2005-2006 school year and subsequent school years, a minimum of forty (40) credits is necessary for high school graduation. Thirty-four (34) of the credits shall be earned in the areas of study specified in subsection (b), and six (6) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) The thirty-four (34) required credits consist of the following:

(1) Language arts	8 credits
(2) Social studies	4 credits
(3) Mathematics	4 credits
(4) Science	4 credits
(5) Health and wellness	1 credit
(6) Physical education I	2 credits
(7) Career-academic sequence	6 credits
(8) Flex credits	5 credits

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:

(1) Language arts credits must include a balance of literature, composition, and speech. A minimum of six (6) credits of the language arts requirement must be from the English language arts area of study. Two (2) credits may be from:

- (A) business technology;
- (B) family and consumer sciences;
- (C) technology education; or
- (D) career-technical;

courses having predominately language arts content. For a student who successfully completes a Level III world language course, the student's school may waive two (2) credits of the language arts requirement.

(2) Social studies credits must include the following:

- (A) Two (2) credits in United States history.
- (B) One (1) credit in United States government.
- (C) One (1) credit in another social studies course, global economics, or consumer economics.

(3) Four (4) mathematics credits must be earned after the student enters high school. The purpose of taking mathematics courses before entering grade 9 is to give the student the opportunity to take an additional mathematics course in high school or take a challenging mathematics course in high school over an extended period of time. If the student completes any of the required mathematics courses before entering high school, the student must complete additional mathematics courses in high school. Mathematics credits must include two (2) credits in Algebra I or Integrated Mathematics I unless a student has completed Algebra I or Integrated Mathematics I before entering high school. A minimum of two (2) credits of the mathematics requirement shall be from the mathematics area of study. Two (2) credits may be from:

- (A) business technology;
- (B) family and consumer sciences;
- (C) technology education; or
- (D) career-technical;

courses having predominately mathematics content.

(4) Subject to subdivisions (5) through (7), the health and wellness credit shall be from a course in the health education area of study that has comprehensive health education content.

(5) The health and wellness credit requirement may be waived for a student if the student's program includes one (1) of the following:

- (A) Three (3) credits from the following family and consumer sciences courses:
 - (i) Child development and parenting.
 - (ii) Human development and family wellness.
 - (iii) Interpersonal relationships.
 - (iv) Nutrition and wellness.
 - (v) Orientation to life and careers or adult roles and responsibilities.
- (B) Two (2) credits from the following health careers education courses offered through career-technical

programs:

- (i) Integrated health sciences I.
- (ii) Integrated health sciences II.

(6) One (1) credit substitution of either a science, family and consumer sciences, or health and physical education credit may be used to fulfill the health and wellness credit requirement for a student who qualifies under the religious objection provision of IC 20-10.1-4-7 (hygiene instruction).

(7) Science credits must include two (2) credits in Biology I. The four (4) credits of science shall include content from more than one (1) of the major science discipline categories, which are:

- (A) life science;
- (B) physical science; and
- (C) earth and space science.

Two (2) credits may be from family and consumer sciences or career-technical courses having predominately science content.

(8) Flex credits must include five (5) credits in any combination from the following:

- (A) Additional courses to extend the career-academic sequence.
- (B) Courses involving workplace learning, which may include the following courses:
 - (i) Career exploration internship.
 - (ii) Career planning and success skills (internship).
 - (iii) Business cooperative experiences.
 - (iv) Cooperative family and consumer sciences.
 - (v) Industrial cooperative training.
 - (vi) Interdisciplinary cooperative education.
 - (vii) Marketing field experience.
- (C) Advanced career-technical education, college credit.
- (D) Additional courses in:
 - (i) language arts;
 - (ii) social studies;
 - (iii) mathematics;
 - (iv) science;
 - (v) world languages; or
 - (vi) fine arts.

(d) The career-academic sequence is recommended, but not required, if a student, after completing grade 11:

- (1) transfers to a school accredited by the board from a school not accredited by the board, including a school outside Indiana; or
- (2) initially begins course work under the Core 40 diploma and changes to the requirements of this section.

(Indiana State Board of Education; 511 IAC 6-7.1-4)

511 IAC 6-7.1-5 Core 40 diploma

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5.7-2

Affected: IC 20-10.1-4-5; IC 20-10.1-4.5-2; IC 20-10.1-16-13

Sec. 5. (a) To be eligible for a Core 40 diploma, a student must complete a minimum of forty (40) high school credits.

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Thirty-four (34) of the credits shall be earned in the areas of study specified in subsection (b), and six (6) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) The thirty-four (34) required credits consist of the following:

(1) Language arts	8 credits
(2) Social studies	6 credits
(3) Mathematics	6 credits
(4) Science	6 credits
(5) Health and wellness	1 credit
(6) Physical education I	2 credits
(7) Flex credits	5 credits

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:

- (1) Only courses that officially have been designated as Core 40 courses may be counted.
- (2) Language arts credits must include a balance of literature, composition, and speech.
- (3) Social studies credits must include the following:
 - (A) Two (2) credits in United States history.
 - (B) One (1) credit in United States government.
 - (C) One (1) credit in economics.
 - (D) Two (2) credits in world history and civilization or two (2) credits in geography and history of the world.
- (4) The mathematics requirement is subject to the following:

(A) Mathematics credits must include one (1) of the following course sequences:

- (i) Algebra I, geometry, and algebra II.
- (ii) Integrated mathematics I, integrated mathematics II, and integrated mathematics III.

(B) The student is strongly recommended to earn two (2) mathematics credits during the student's last year in high school. A student who takes mathematics in the senior year is better prepared for mathematics placement exams upon entering a postsecondary education program, an apprenticeship program, or the military. A student who takes mathematics in the senior year is:

- (i) less likely to require remedial mathematics courses following high school; and
- (ii) more likely to complete a postsecondary program.

(C) Six (6) mathematics credits must be earned after the student enters high school. The purpose of taking mathematics courses before entering grade 9 is to give the student the opportunity to take an additional mathematics course in high school or take a challenging mathematics course in high school over an extended period of time. If the student completes any of the required mathematics courses before entering high school, the student must complete additional Core 40 mathematics courses in high school.

(5) Science credits must include the following:

- (A) Two (2) credits in biology.
 - (B) Two (2) credits in chemistry, physics, or integrated chemistry-physics.
 - (C) Two (2) additional credits in Core 40 science courses.
- (6) Flex credits must include five (5) credits in any combination from the following:
- (A) World languages.
 - (B) Fine arts.
 - (C) Career-technical.

(d) The student is encouraged to complete a career-academic sequence. (*Indiana State Board of Education; 511 IAC 6-7.1-5*)

511 IAC 6-7.1-6 Core 40 diploma with academic honors

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5.7-2

Affected: IC 20-10.1-4-5; IC 20-10.1-4.5-2; IC 20-10.1-16-13

Sec. 6. (a) To be eligible for a Core 40 diploma with academic honors, a student must complete a minimum of forty-seven (47) high school credits. Depending on the world languages option chosen, thirty-eight (38) or forty (40) of the credits shall be earned in the areas of study specified in subsection (b), and seven (7) or nine (9) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) Required credits consist of the following:

(1) Language arts	8 credits
(2) Social studies	6 credits
(3) Mathematics	8 credits
(4) Science	6 credits
(5) Health and wellness	1 credit
(6) Physical education I	2 credits
(7) World languages	6 or 8 credits
(8) Fine arts	2 credits

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:

- (1) Only courses that officially have been designated as Core 40 courses may be counted.
- (2) Language arts credits must include a balance of literature, composition, and speech.
- (3) Social studies credits must include the following:
 - (A) Two (2) credits in United States history.
 - (B) One (1) credit in United States government.
 - (C) One (1) credit in economics.
 - (D) Two (2) credits in world history and civilization or two (2) credits in geography and history of the world.
- (4) The mathematics requirement is subject to the following:
 - (A) Mathematics credits must include one (1) of the following course sequences:

(i) Algebra I, geometry, algebra II, and two (2) additional credits in Core 40 mathematics courses.

(ii) Integrated mathematics I, integrated mathematics II, integrated mathematics III, and two (2) additional credits in Core 40 mathematics courses.

(B) The student is strongly recommended to earn two (2) mathematics credits during the student's last year in high school. A student who takes mathematics in the senior year is better prepared for mathematics placement exams upon entering a postsecondary education program, an apprenticeship program, or the military. A student who takes mathematics in the senior year is:

(i) less likely to require remedial mathematics courses following high school; and

(ii) more likely to complete a postsecondary program.

(C) Eight (8) mathematics credits must be earned after the student enters high school. The purpose of taking mathematics courses before entering grade 9 is to give the student the opportunity to take an additional mathematics course in high school or take a challenging mathematics course in high school over an extended period of time. If the student completes any of the required mathematics courses before entering high school, the student must complete additional Core 40 mathematics courses in high school.

(5) Science credits must include the following:

(A) Two (2) credits in biology.

(B) Two (2) credits in chemistry, physics, or integrated chemistry-physics.

(C) Two (2) additional credits in Core 40 science courses.

(6) World languages credits must include one (1) of the following:

(A) Six (6) credits in Core 40 courses in a single world language.

(B) Two (2) credits in Core 40 courses in each of two (2) different world languages.

(d) Only courses in which the student earns a grade of "C" or higher may count toward the credits required in subsections (b) and (f).

(e) The student must have a cumulative grade point average of "B" or above in all courses.

(f) The student must complete one (1) of the following:

(1) Four (4) credits in two (2) courses designated as "advanced placement" under 511 IAC 6.1-5.1 and the corresponding College Board Advanced Placement tests.

(2) Dual high school and college credit courses resulting in six (6) transferable college credits.

(3) The following combination of advanced placement courses and tests and college credits:

(A) Two (2) credits in a course designated as "advanced placement" under 511 IAC 6.1-5.1 and the correspond-

ing College Board Advanced Placement test.

(B) Dual high school and college credit courses resulting in three (3) transferable college credits.

(4) The SAT test, with a composite score of 1200 or higher.

(5) The ACT test, with a composite score of 26 or higher.

(6) The International Baccalaureate.

(g) The student is encouraged to complete a career-academic sequence. (*Indiana State Board of Education; 511 IAC 6-7.1-6*)

511 IAC 6-7.1-7 Core 40 diploma with technical honors

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5.7-2

Affected: IC 20-10.1-4-5; IC 20-10.1-4.5-2; IC 20-10.1-16-13

Sec. 7. (a) To be eligible for a Core 40 diploma with technical honors, a student must complete a minimum of forty-seven (47) high school credits. Thirty-seven (37) or thirty-nine (39) of the credits shall be earned in the areas of study specified in subsection (b), and eight (8) or ten (10) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) Required credits consist of the following:

(1) Language arts	8 credits
(2) Social studies	6 credits
(3) Mathematics	6 credits
(4) Science	6 credits
(5) Health and wellness	1 credit
(6) Physical education I	2 credits
(7) Career-technical program	8-10 credits

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:

(1) Only courses that officially have been designated as Core 40 courses may be counted.

(2) Language arts credits must include a balance of literature, composition, and speech.

(3) Social studies credits must include the following:

(A) Two (2) credits in United States history.

(B) One (1) credit in United States government.

(C) One (1) credit in economics.

(D) Two (2) credits in world history and civilization or two (2) credits in geography and history of the world.

(4) The mathematics requirement is subject to the following:

(A) Mathematics credits must include one (1) of the following course sequences:

(i) Algebra I, geometry, and algebra II.

(ii) Integrated mathematics I, integrated mathematics II, and integrated mathematics III.

(B) The student is strongly recommended to earn two (2) mathematics credits during the student's last year in high school. A student who takes mathematics in the

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senior year is better prepared for mathematics placement exams upon entering a postsecondary education program, an apprenticeship program, or the military. A student who takes mathematics in the senior year is:

- (i) less likely to require remedial mathematics courses following high school; and
- (ii) more likely to complete a postsecondary program.

(C) Six (6) mathematics credits must be earned after the student enters high school. The purpose of taking mathematics courses before entering grade 9 is to give the student the opportunity to take an additional mathematics course in high school or take a challenging mathematics course in high school over an extended period of time. If the student completes any of the required mathematics courses before entering high school, the student must complete additional Core 40 mathematics courses in high school.

(5) Science credits must include the following:

- (A) Two (2) credits in biology.
- (B) Two (2) credits in chemistry, physics, or integrated chemistry-physics.
- (C) Two (2) additional credits in Core 40 science courses.

(d) Only courses in which the student earns a grade of "C" or higher may count toward the credits required in subsection (b).

(e) The student must have a cumulative grade point average of "B" or above in all courses.

(f) The student must earn a state-recognized certification or certificate of technical achievement in the career-technical program. (*Indiana State Board of Education; 511 IAC 6-7.1-7*)

511 IAC 6-7.1-8 Correspondence courses; credit

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5.7-2

Affected: IC 20-10.1-4-5; IC 20-10.1-4.5-2; IC 20-10.1-16-13

Sec. 8. A student desiring to complete courses by correspondence first obtains the approval of the local school board or its designee. The local school board has the option of establishing a maximum number of credits acceptable for meeting graduation requirements. Correspondence credits are acceptable only when taken from an institution properly accredited by the appropriate regional accrediting association affiliated with or approved by the council on postsecondary accreditation (COPA). (*Indiana State Board of Education; 511 IAC 6-7.1-8*)

511 IAC 6-7.1-9 Military experience

Authority: IC 20-1-1-6; IC 20-10.1-4; IC 20-10.1-5.7-2

Affected: IC 20-10.1-4-5; IC 20-10.1-4.5-2; IC 20-10.1-16-13

Sec. 9. (a) Subject to the limitations in this section, a school board may recognize training and experience

obtained in the United States armed forces in meeting high school graduation requirements.

(b) A maximum of four (4) credits may be recognized for basic training in the following areas:

- (1) Physical education 2 credits
- (2) Health and wellness 2 credits

A maximum of one (1) credit may be granted for each three (3) months of service.

(c) Credit for service training schools may be granted in accordance with recommendations made by the American Council on Education in the publication *Guide to the Evaluation of Educational Experience in the Armed Forces*.

(d) Credit may be awarded for courses completed in the:

- (1) United States Armed Forces Institute;
- (2) Marine Corps Institute; and
- (3) Coast Guard Institute;

provided that the course are validated by terminal examinations as recommended by the American Council on Education. Credit may be awarded in recognition of satisfactory achievement on examinations in established high school courses, not including GED tests, offered by the United States Armed Forces Institute and the American Council on Education.

(e) Credit may be awarded for courses completed through accredited colleges and universities as recommended by the respective colleges and universities. (*Indiana State Board of Education; 511 IAC 6-7.1-9*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 25, 2005 at 10:00 a.m., at the 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 new rule, effective with the graduating class of 2009, to adopt new minimum high school graduation requirements, adopt new Core 40 diploma requirements, and adopt Core 40 with Academic Honors and Core 40 with Technical Honors diplomas to replace the current Academic Honors Diploma. 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 675 FIRE PREVENTION AND BUILDING
SAFETY COMMISSION**

Proposed Rule
LSA Document #04-217

DIGEST

Amends 675 IAC 18-1.4, the 2003 Indiana Mechanical Code, to make numerous substantive and clarifying changes. Effective 30 days after filing with the secretary of state.

675 IAC 18-1.4-10.5	675 IAC 18-1.4-32.5
675 IAC 18-1.4-11.5	675 IAC 18-1.4-49.5
675 IAC 18-1.4-32.3	

SECTION 1. 675 IAC 18-1.4-10.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 18-1.4-10.5 Section 304.3; elevation of ignition source

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 10.5. In the second sentence of Section 304.3, Elevation of ignition source, before “Group”, delete “use”. (Fire Prevention and Building Safety Commission; 675 IAC 18-1.4-10.5)

SECTION 2. 675 IAC 18-1.4-11.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 18-1.4-11.5 Section 310; explosion venting

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 11.5. Change the title of Section 310 to read “Explosion Control”. (Fire Prevention and Building Safety Commission; 675 IAC 18-1.4-11.5)

SECTION 3. 675 IAC 18-1.4-32.3 IS ADDED TO READ AS FOLLOWS:

675 IAC 18-1.4-32.3 Section 607.5.4; corridors/smoke barriers

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 32.3. Delete the text of Exception 2 in Section 607.5.4 and substitute “Smoke dampers shall not be required in duct penetration of smoke barriers in fully ducted heating, ventilating, and air conditioning systems.”. (Fire Prevention and Building Safety Commission; 675 IAC 18-1.4-32.3)

SECTION 4. 675 IAC 18-1.4-32.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 18-1.4-32.5 Section 607.5.5.1; penetrations of shaft enclosures

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 32.5. In the first sentence of Section 607.5.5.1, delete “and smoke” without substitution. (Fire Prevention and Building Safety Commission; 675 IAC 18-1.4-32.5)

SECTION 5. 675 IAC 18-1.4-49.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 18-1.4-49.5 Section 1403.2; flammable gases and liquids

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 49.5. In the second sentence of Section 1403.2, delete “Use”. (Fire Prevention and Building Safety Commission; 675 IAC 18-1.4-49.5)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 17, 2005, at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana; AND on May 4, 2005 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing on proposed amendments to the 2003 Indiana Mechanical Code. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Luther J. Taylor, Sr.
Secretary
Fire Prevention and Building Safety Commission

**TITLE 675 FIRE PREVENTION AND BUILDING
SAFETY COMMISSION**

Proposed Rule
LSA Document #04-218

DIGEST

Amends 675 IAC 25-1, the 2003 Indiana Fuel Gas Code, to make numerous substantive and clarifying changes. Effective 30 days after filing with the secretary of state.

675 IAC 25-1-7.2	675 IAC 25-1-9.3
675 IAC 25-1-7.4	675 IAC 25-1-9.5
675 IAC 25-1-7.6	675 IAC 25-1-9.7
675 IAC 25-1-9.1	675 IAC 25-1-9.9

SECTION 1. 675 IAC 25-1-7.2 IS ADDED TO READ AS FOLLOWS:

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675 IAC 25-1-7.2 Table 308.2

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 7.2. In Table 308.2, delete “0.024” and insert “0.024 inch (24 gage)” in the left column in item numbers 3, 5, 7, and 8. (*Fire Prevention and Building Safety Commission; 675 IAC 25-1-7.2*)

SECTION 2. 675 IAC 25-1-7.4 IS ADDED TO READ AS FOLLOWS:

675 IAC 25-1-7.4 Figure 308.2(3)

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 7.4. Change the title of Figure 308.2(3) to read: “Masonry clearance reduction system”. (*Fire Prevention and Building Safety Commission; 675 IAC 25-1-7.4*)

SECTION 3. 675 IAC 25-1-7.6 IS ADDED TO READ AS FOLLOWS:

675 IAC 25-1-7.6 Section 403.11; plastic piping, joints, and fittings

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 7.6. In Section 403.11, Plastic piping, joints and fittings, change the third sentence in item number 3 to read: “The stiffener shall be flush with the end of the pipe or tubing and shall extend at least to the outside end of the compression fitting when installed.”. (*Fire Prevention and Building Safety Commission; 675 IAC 25-1-7.6*)

SECTION 4. 675 IAC 25-1-9.1 IS ADDED TO READ AS FOLLOWS:

675 IAC 25-1-9.1 Section 503.5.3; masonry chimneys

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 9.1. In Section 503.5.3, masonry chimneys, change, in the last sentence (after exception), the referenced section number to 503.6.5. (*Fire Prevention and Building Safety Commission; 675 IAC 25-1-9.1*)

SECTION 5. 675 IAC 25-1-9.3 IS ADDED TO READ AS FOLLOWS:

675 IAC 25-1-9.3 Table/Figure 503.6.6

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 9.3. In the second row of Table/Figure 503.6.6, before 6/12 to 7/12, insert “over”. (*Fire Prevention and Building Safety Commission; 675 IAC 25-1-9.3*)

SECTION 6. 675 IAC 25-1-9.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 25-1-9.5 Section 503.6.9.1; Category I appliances

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 9.5. In Section 503.6.9.1, Category I appliances, in Exception number 2, in the fifth line, delete “outlets” and insert “outlet” and, in the sixth line, delete “smallest” and insert “smaller”. (*Fire Prevention and Building Safety Commission; 675 IAC 25-1-9.5*)

SECTION 7. 675 IAC 25-1-9.7 IS ADDED TO READ AS FOLLOWS:

675 IAC 25-1-9.7 Section 503.7.5; roof penetrations

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 9.7. In the third line of Section 503.7.5, Roof penetrations, delete “jacket” and insert “jack”. (*Fire Prevention and Building Safety Commission; 675 IAC 25-1-9.7*)

SECTION 8. 675 IAC 25-1-9.9 IS ADDED TO READ AS FOLLOWS:

675 IAC 25-1-9.9 Section 504.2.9; chimney and vent locations

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 9.9. In Section 504.2.9, Chimney and vent locations, change, in item 4, the second line to read: given by Table 504.2(3). (*Fire Prevention and Building Safety Commission; 675 IAC 25-1-9.9*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 17, 2005, at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana; **AND** on May 4, 2005 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing on proposed amendments to the 2003 Indiana Fuel Gas Code. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Luther J. Taylor, Sr.

Secretary

Fire Prevention and Building Safety Commission

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #04-140

DIGEST

Amends 760 IAC 1-21 regarding definitions, filing of proof of financial responsibility, use of insurance and means other than insurance for proof of financial responsibility, certificates of insurance, deposits, reserves, surcharge payment and amount, corporations as qualified health care providers, the annual aggregate, settlement of claims and communication between the Department of Insurance and the health care provider. Effective 30 days after filing with the secretary of state.

760 IAC 1-21-2	760 IAC 1-21-8
760 IAC 1-21-3	760 IAC 1-21-10
760 IAC 1-21-4	760 IAC 1-21-11
760 IAC 1-21-5	

SECTION 1. 760 IAC 1-21-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-2 Definitions

Authority: IC 34-18-5-4
Affected: IC 16-21-2; IC 16-28; IC 25-22.5; IC 34-18-2-14; IC 34-18-17

Sec. 2. ~~As used in~~ **The following definitions apply throughout this rule:**

- (1) ~~“Health care~~ **“Ancillary provider”** means all health care providers as defined in IC 34-18-2-14, except physicians and hospitals.
- (2) ~~“Hospital” means a public or private institution licensed under IC 16-21-2.~~
- (2) **“Claims made coverage”** means coverage for claims made during a coverage period.
- (3) **“Commissioner”** means the commissioner of insurance of Indiana.
- (4) **“Department”** means the Indiana department of insurance.
- (5) **“Health facility”** means a facility named on the license issued by the Indiana state department of health under IC 16-28.
- (6) **“Hospital”** means a public or private institution licensed under IC 16-21-2.
- (7) **“IRMIA”** means the Indiana residual malpractice insurance authority created by IC 34-18-17.
- (8) **“Occurrence based coverage”** means coverage for acts that occur during a coverage period.
- ~~(4)~~ (9) **“Physician”** means an individual with an unlimited license to practice medicine under IC 25-22.5.

(Department of Insurance; Reg 22, Sec II; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 514; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 2. 760 IAC 1-21-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-3 Establishment of financial responsibility by ancillary provider or physician

Authority: IC 34-18-5-4
Affected: IC 34-18-4-1

Sec. 3. ~~A health care~~ **(a) An ancillary** provider or a physician desiring to establish financial responsibility under IC 34-18-4-1 by a means other than insurance may do so by submitting, to the commissioner, the following:

- (1) An agreement in writing, in a form and manner prescribed by the commissioner, to pay any final judgment or agreed settlement arising from claims of malpractice in accordance with the limits on liability set forth in IC 34-18-4-1(1).
- (2) Filing and maintaining with the commissioner, cash or surety bonds, from a company acceptable to the commissioner, in accordance with the limits on liability set forth in IC 34-18-4-1(1) for each year in which financial responsibility is established by a means other than insurance.

(b) An ancillary provider or physician that establishes proof of financial responsibility under this section may obtain only occurrence based coverage with the patient’s compensation fund. Claims made coverage is not available. *(Department of Insurance; Reg 22, Sec III; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 514; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 3. 760 IAC 1-21-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-4 Retention of deposit during liability

Authority: IC 34-18-5-4
Affected: IC 34-18-4-1; IC 34-18-4-2

Sec. 4. ~~If a health care~~ **an ancillary** provider or physician that has established financial responsibility, in the manner set forth in section 3 of this rule:

- (1) ceases practice;
- (2) establishes financial responsibility by means of insurance; or
- (3) decides that he or she no longer wishes to establish financial responsibility under IC 34-18;

any cash or surety bond filed with the commissioner shall remain on deposit until liability ceases to exist. *(Department of Insurance; Reg 22, Sec IV; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 515; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 4. 760 IAC 1-21-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-5 Financial responsibility of hospital

Authority: IC 34-18-5-4
Affected: IC 16-21-2; IC 34-18-4-1; IC 34-18-5-3

Sec. 5. A hospital may establish financial responsibility for itself, its officers, agents, and employees under IC 34-18-4-1(3) by submitting, to the commissioner, all of the following at least sixty (60) days before the requested effective date of coverage with the patient's compensation fund:

(1) An agreement in writing, in a form and manner prescribed by the commissioner, to pay any final judgment or agreed settlement arising from claims of malpractice subject to the limits on liability set forth in IC 34-18-4-1(1)(A)(i) and IC 34-18-4-1(1)(A)(ii).

(2) An agreement in writing that the hospital will establish and maintain a claims management and risk management program, which program shall include, at a minimum, the following:

(A) Procedures satisfactory to the commissioner for the prompt investigation of each malpractice claim reported to the hospital to determine:

- (i) whether malpractice liability exists; and to determine
- (ii) its cause.

(B) Procedures for the efficient processing, adjustment, and reasonable settlement of claims.

(C) Procedures for the defense by legal counsel of claims that cannot be adjusted or settled.

(D) Procedures to examine the cause of losses and to take action to reduce their frequency and severity, including a safety program and employee and professional training program.

The hospital may undertake such a claims management and risk management program through its own qualified personnel, or it may undertake part or all of the program through the services of qualified independent contractors.

(3) A verified financial statement that demonstrates the financial resources of the hospital are sufficient to satisfy all malpractice claims incurred by it up to the limits on liability set forth in IC 34-18-4-1(3). Notwithstanding, if the hospital is an agency of any governmental unit and desires to use the taxing power of that governmental unit to establish its financial security, it may establish financial responsibility by filing with the commissioner a copy of an ordinance or resolution of the taxing governing body of the governmental unit, authorizing the hospital to do so, and acknowledging the responsibility of the governmental unit for any judgment or settlement arising from claims of malpractice.

(4) An agreement in writing that if the hospital discontinues operation or decides to purchase insurance to establish financial responsibility under IC 34-18 et seq., the hospital will continue to be liable in the amounts set forth in subdivision (1) until liability ceases to exist.

(5) For each year in which the hospital establishes proof of financial responsibility under this section, the hospital shall obtain the quotation for the surcharge amount to be paid to the patient's compensation fund from IRMIA. In support of this calculation, the hospital shall submit to IRMIA the following:

(A) The hospital's most recent application for licensure

to operate a hospital under IC 16-21-2 on file with the Indiana state department of health.

(B) Any other information reasonably requested by IRMIA to accurately determine the surcharge amount. This information shall be submitted to IRMIA at least sixty (60) days before the requested effective date of coverage with the patient's compensation fund. IRMIA shall retain this information for a period of ten (10) years. (6) A hospital that establishes proof of financial responsibility under this section may obtain only occurrence based coverage with the patient's compensation fund. Claims made coverage is not available.

(Department of Insurance; Reg 22, Sec V; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 515; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2875; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 5. 760 IAC 1-21-8 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-8 Payment into patient's compensation fund; annual surcharge

Authority: IC 34-18-5-4

Affected: IC 27-1-6; IC 27-1-17; IC 34-18-5-2; IC 34-18-5-3

Sec. 8. (a) The annual surcharge for a health care ancillary provider shall be one hundred ten percent (100%) (110%) of the cost to the health care ancillary provider for maintenance the purchase of insurance as proof of financial responsibility as long as the premium is deemed by the commissioner to be reasonable in relation to the benefits provided as follows:

(1) If an ancillary provider purchases insurance from an insurance company that:

(A) holds a certificate of authority under IC 27-1-6 or IC 27-1-17; and

(B) has premium rates on file with, and not subject to objection by, the department;

then the premium is deemed reasonable.

(2) If an ancillary provider purchases insurance from an authorized surplus lines company, the following items must be provided to the department:

(A) The name, address, and state or country of domicile of the insurance company.

(B) A statement from a qualified actuary that the premium rate charged is reasonable in relation to the benefits provided.

If the department has no objection to the actuary's statement, then the premium is deemed to be reasonable.

(b) ~~A health care~~ An ancillary provider establishing financial responsibility by means other than insurance under section 3 of this rule or through purchasing insurance from an insurer that:

(1) does not hold a certificate of authority from the department; and

(2) is not an authorized surplus lines company;

shall pay into the patient's compensation fund an amount equal to one hundred ~~ten~~ percent ~~(100%)~~ **(110%)** of the premium that would be charged to the health care ancillary provider by the ~~residual malpractice insurance authority: IRMIA.~~ The payment must be made each year under IC 34-18-5-3 within thirty (30) days after qualification. (*Department of Insurance; Reg 22, Sec VIII; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 516; filed Mar 18, 1986, 10:41 a.m.: 9 IR 2057, eff Apr 18, 1986; filed May 28, 1987, 4:00 p.m.: 10 IR 2298; filed Aug 13, 1991, 4:00 p.m.: 15 IR 7; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2875; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531*)

SECTION 6. 760 IAC 1-21-10 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-21-10 Scope of coverage

Authority: IC 34-18-5-4

Affected: IC 16-21-2; IC 34-18-2-24.5; IC 34-18-5-2; IC 34-18-5-3; IC 34-18-6-6; IC 34-18-14-3

Sec. 10. (a) A hospital's coverage with the patient's compensation fund may include claims against the following:

- (1) The hospital's officers, agents, and employees.
- (2) Facilities identified in the hospital's application for licensure to operate a hospital under IC 16-21-2 as facilities operated under the hospital license.

A hospital may not cover claims for independent contractors. Each hospital shall identify on the surcharge calculation worksheet prescribed by the department all of the facilities operated under the hospital's license and classes of employees intended to be included in the hospital's coverage.

(b) An ancillary provider may cover claims against its officers, agents, and employees. An ancillary provider's coverage shall not include claims for independent contractors. An ancillary provider shall identify in the certificate of coverage prescribed by the department any employed physician and the physician's specialty class as defined at 760 IAC 1-60.

(c) Any health care provider that uses an assumed business name must state the assumed business name on the certificate of coverage filed with the department for the assumed business name to be included in the health care provider's status as a qualified provider as defined by IC 34-18-2-24.5.

(d) Any health care provider that establishes proof of financial responsibility by means other than insurance under section 3 or 5 of this rule or through purchasing insurance from an authorized surplus lines company of any other insurer not holding a certificate of authority from the department shall file a statement signed by the health provider that states the following:

(1) The ancillary provider is aware that:

- (A) the insurer does not hold a certificate of authority from the department (if applicable); and
- (B) he or she is not entitled to coverage under the Indiana Insurance Guaranty Association.

(2) In the event of insolvency, the ancillary provider agrees not to seek reimbursement from the patient's compensation fund for any amounts due that are the responsibility of the ancillary provider under IC 34-18-14-3 or for the cost of defending a claim except in the event the ancillary provider has exhausted its annual aggregate as provided by IC 34-18-6-6.

(*Department of Insurance; 760 IAC 1-21-10*)

SECTION 7. 760 IAC 1-21-11 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-21-11 Filings by health facilities

Authority: IC 34-18-5-4

Affected: IC 34-18-5-2; IC 34-18-5-3

Sec. 11. (a) A health facility shall submit the following information to the department with its certificate of coverage and surcharge payment:

Number of occupied beds	Type of bed
XX	Skilled Care
XX	Intermediate Care
XX	Residential Care
XX	Independent Living

(b) The following definitions apply throughout this section:

(1) "Independent living" means residents:

- (A) are retirement age;
- (B) are in general good health;
- (C) occupy apartments or dwelling units that normally include cooking facilities;
- (D) administer their own medications without assistance; and
- (E) do not receive health care services.

(2) "Intermediate care" means residents require nursing care during the day shift, seven (7) days per week, by registered or licensed nurses. There is no complex nursing care provided. Complex nursing care consists of functions such as intravenous medications or tube feedings. Assistance is provided with activities of daily living such as the following:

- (A) Walking.
- (B) Bathing.
- (C) Dressing.
- (D) Eating.

Some assistance is provided in the administration of medication.

(3) "Residential care" means residents are ambulatory with possible minor medical disorders. A protected

Proposed Rules

environment is provided including meals and planned programs for social or spiritual needs. Incidental health care services are provided, such as medication assistance. A registered nurse may be required to provide consultative services.

(4) "Skilled care" means residents require nursing care during twenty-four (24) hours per day by registered or licensed nurses. Nursing care provided includes some or all of the following:

(A) Medication administration.

(B) Injections.

(C) Tube feedings.

(D) Catheterizations.

(E) Other procedures ordered by a physician.

(Department of Insurance; 760 IAC 1-21-11)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 24, 2005 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 proposed amendments concerning definitions, filing of proof of financial responsibility, use of insurance and means other than insurance for proof of financial responsibility, certificates of insurance, deposits, reserves, surcharge payment and amount, corporations as qualified health care providers, the annual aggregate, settlement of claims and communication between the Department of Insurance and the health care provider. 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.

Amy E. Strati
Acting Commissioner
Department of Insurance

Final Readopted Rules**TITLE 140 BUREAU OF MOTOR VEHICLES**

Final Rule
LSA Document #04-162(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

140 IAC 4-4**140 IAC 8-4**

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

- 140 IAC 4-4 Driver Education Classes
- 140 IAC 8-4 Crossroads 2000 Fund; Fee Increases

LSA Document #04-162(F)

Intent to Readopt Rules Published: July 1, 2004; 27 IR 3342

Proposed Readopted Rules Published: October 1, 2004; 28 IR 323

Hearing Held: November 1, 2004

Filed with Secretary of State: November 16, 2004, 12:25 p.m.

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Final Rule
LSA Document #04-163(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

170 IAC 1-4**170 IAC 1-5**

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

- 170 IAC 1-4 Mediation
- 170 IAC 1-5 Minimum Standard Filing Requirements

LSA Document #04-163(F)

Intent to Readopt Rules Published: July 1, 2004; 27 IR 3342

Proposed Readopted Rules Published: September 1, 2004; 27 IR 4140

Hearing Held: November 23, 2004

Filed with Secretary of State: November 23, 2004, 2:30 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule
LSA Document #03-315(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

312 IAC 8**312 IAC 16****312 IAC 17****312 IAC 19****312 IAC 26**

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

- 312 IAC 8 PUBLIC USE OF NATURAL AND RECREATIONAL AREAS
- 312 IAC 16 OIL AND GAS
- 312 IAC 17 OTHER PETROLEUM REGULATION
- 312 IAC 19 RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS
- 312 IAC 26 GRANT PROGRAMS

LSA Document #03-315(F)

Intent to Readopt Rules Published: January 1, 2004; 27 IR 1294

Proposed Readopted Rules Published: April 1, 2004; 27 IR 2339

Hearing Held: May 10, 2004

Filed with Secretary of State: November 17, 2004, 11:00 a.m.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Final Rule
LSA Document #04-14(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

905 IAC 1-43

Readopted Rules

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS
READOPTED:

905 IAC 1-43 Excursion and Adjacent Landsite Permits

LSA Document #04-14(F)

*Intent to Readopt Rules Published: February 1, 2004; 27 IR
1650*

Proposed Readopted Rules Published: May 1, 2004; 27 IR 2579

Hearing Held: July 26, 2004

Filed with Secretary of State: November 22, 2004, 3:30 p.m.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Final Rule

LSA Document #04-109(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

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

LSA Document #04-109(F)

Intent to Readopt Rules Published: May 1, 2004; 27 IR 2578

Proposed Readopted Rules Published: July 1, 2004; 27 IR 3343

Hearing Held: July 26, 2004

Filed with Secretary of State: November 22, 2004, 3:30 p.m.

60 Day Requirement (IC 4-22-2-19)

**TITLE 905 ALCOHOL AND TOBACCO
COMMISSION**

LSA Document #03-319

November 19, 2004

The Honorable R. Michael Young, Chairman
Administrative Rules Oversight Committee
302 Statehouse
Indianapolis, Indiana 46204

RE: 905 IAC 1-45, LSA Document #03-319

Dear Senator Young:

This letter is to notify the Administrative Rules Oversight Committee of changes in progress to the above rule, which sets forth the information required on keg registration labels pursuant to IC 7.1-3-18.5, *et seq.* Under Ind. Code 4-22-2-19, an agency that adopts a rule must begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule.

905 IAC 1-45 became effective on or about September 27, 2003. At that time, we were operating under the mistaken understanding that most kegs carried manufacturer identification numbers and thus we required that on the keg label at the time of purchase from the retailer. We also required addresses of the purchasers but with the passage of time and the reality of keg sales in college and university towns, many keg purchasers opted to give their home state address which made enforcement efforts difficult in some instances. The keg labels have been changed to no longer require a manufacturer's identification because they mostly do not exist, and to require a current residence address so that student purchasers will be required to give local addresses which we believe will aid in enforcement aspects of the rule. The rule is being amended to reflect these changes.

These amendments have no fiscal impact on the State or the Alcohol & Tobacco Commission. Please let me know if further information on this rule is needed. I can be reached directly at (317) 232-2472 or *via* email at mwebb@atc.state.in.us. Thank you very much for your kind attention in this regard.

Very truly yours,

Mark C. Webb
Executive Secretary

365 Day Notice (IC 4-22-2-25)

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #04-77

To: Honorable R. Michael Young, Chairman
Administrative Rules Oversight Committee
c/o Ms. Sarah Burkman

From: Erin M. McQueen, Staff Attorney
Office of General Counsel
Family and Social Services Administration

Re: LSA Document #04-77 – Child Care Home Rule
Amendments

Date: December 2, 2004

Cc: Rachel McGeever, General Counsel, FSSA
Lanier DeGrella, Deputy Director, DFC/BCD
Sharon Sullivan, Manager, 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 April 1, 2004 (27 IR 2302). The proposed rule was published on June 1, 2004 (27 IR 2837). Five public hearings were held on June 23, 2004; June 24, 2004; June 29, 2004; June 30, 2004 and July 1, 2004 in various parts of the state. The written comment period was left open to July 16, 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 received numerous public comments and gave careful consideration to all the public comments. In addition, during the time period the division was considering the public comments the Board for the Coordination of Child Care Regulation ("Board") took an interest in the rule and had various issues regarding the rule on its agenda for several months. Therefore, the division did not finish giving consideration to the public comments until after the Board's last meeting on October 21, 2004. The rule is currently under consideration for adoption 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. 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 possible that the rule will not 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 June 30, 2005, although it is still possible that the rule process will be completed within the one year time frame.

This notice setting forth the expected date of approval of LSA Document #04-77 by June 30, 2005 is being submitted in a timely manner. December 6, 2004 is the two hundred fiftieth day after publication of the notice of intent to adopt a rule.

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

#04-200(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING NITROGEN OXIDES (NO_x) SIP CALL, PHASE II RULE

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 10-3 (Nitrogen Oxides Reduction Program for Specific Source Categories) and 326 IAC 10-4 (Nitrogen Oxides Budget Trading Program) and is proposing to add 326 IAC 10-5 (Nitrogen Oxide Reduction Program for Internal Combustion Engines (ICE)) concerning the nitrogen oxides (NO_x) state implementation plan (SIP) call, Phase II rule. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: August 1, 2004, Indiana Register (27 IR 3708).

CITATIONS AFFECTED: 326 IAC 10-3-3; 326 IAC 10-4-1; 326 IAC 10-4-2; 326 IAC 10-4-3; 326 IAC 10-4-9; 326 IAC 10-4-13; 326 IAC 10-4-14; 326 IAC 10-4-15; 326 IAC 10-5.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

On September 24, 1998, U. S. EPA issued a rule (NO_x SIP Call) that required twenty-two (22) states in the Eastern U.S., including Indiana and the District of Columbia to adopt strategies to reduce regional transport of ozone through reductions in nitrogen oxides (NO_x) emissions. NO_x is a primary ingredient in the formation of ground-level ozone pollution (smog). Facilities that emit NO_x in upwind states contribute to smog formation in downwind states. When inhaled, ground-level ozone can cause acute respiratory problems, aggravate asthma, reduce lung capacity, inflame lung tissue, and impair the body's immune system.

The federal rule established an overall cap on NO_x emissions for Indiana based on significant emissions reductions from electric utility boilers, large industrial boilers, cement kilns, and stationary internal combustion engines by 2007. U.S. EPA promulgated the federal rule to address the transport of ozone and ozone-causing pollutants that occurred in this multistate region because NO_x was significantly contributing to the one (1) hour ozone nonattainment areas.

Eight (8) states challenged the rule and on March 3, 2000, the D.C. Circuit upheld most of EPA's NO_x SIP Call, but remanded the portion of the rule concerning stationary internal combustion engines (ICEs) to U.S. EPA for further notice and comment. In order to address the Court's decision and move the process forward, U.S. EPA divided the NO_x SIP Call into Phase I and Phase II rule actions.

In response to U.S. EPA's NO_x SIP Call, the Air Pollution Control Board (board) final adopted rules on June 6, 2001, that became effective on September 16, 2001. The rules responded to Phase I of the NO_x SIP Call and were approved by U.S. EPA as a state implementation plan (SIP) amendment on November 8, 2001 (66 FR 56465).

On April 21, 2004 (69 FR 21603), U.S. EPA issued the "Interstate Ozone Transport: Response to Court Decisions on the NO_x SIP Call,

NO_x SIP Call Technical Amendments, and Section 126 Rules: Final Rule" that became effective on June 21, 2004. This final rule requires states that submitted Phase I NO_x SIP Call budgets to submit NO_x Phase II SIP revisions as needed to achieve the remaining incremental reductions of NO_x. Although not a state rule change, U.S. EPA's final rule also revises statewide emission budgets in the NO_x SIP Call. The Phase II SIPs are due to U.S. EPA by April 1, 2005.

The NO_x Phase II rule requires amendments to the definitions for electric generating units and large affected units under 326 IAC 10-4 (Nitrogen Oxides Budget Trading Program). U.S. EPA's rule also requires additional NO_x budget reductions with a recommendation of regulating stationary ICEs as a way to achieve those reductions. IDEM used U.S. EPA's memorandum dated September 19, 2004, "Phase II of the NO_x SIP Call: Q&As and Example Rule" in drafting new rule 326 IAC 10-5. In Indiana, reductions of four thousand two hundred sixty-three (4,263) tons must be achieved by the May 1, 2007 compliance date. Additional clerical corrections are made to both 326 IAC 10-3 (Nitrogen Oxide Reduction Program for Specific Source Categories) and 326 IAC 10-4 including corrections to the equation at 326 IAC 10-4-9(e)(3)(C)(vi).

This draft rule applies to any person who owns or operates a large reciprocating stationary internal combustion engine that emitted more than one (1) ton per average ozone season day during the baseline period of May 1, 1995, to September 30, 1995. U.S. EPA developed emission limitations based on low emission combustion (LEC) technology. One hundred (100) internal combustion engines were identified using Indiana's inventory, U.S. EPA's 1995 inventory, and information from pipeline companies, of which seventeen (17) engines are subject to this rule. These engines are located at compressor stations along pipelines that transport natural gas to residential, commercial, industrial, and electric utility customers. The seventeen (17) affected engines are owned by two (2) companies, ANR Pipeline and Panhandle Eastern Company. U.S. EPA's final rule establishes controls of large natural gas-fired stationary internal combustion (lean burn) engines and diesel and dual fuel stationary internal combustion (rich burn) engines. The seventeen (17) engines affected by this draft rule in Indiana are lean burn engines.

Alternatives To Be Considered Within the Rulemaking

• Alternative 1. Reduction of NO_x by controlling internal combustion engines (ICEs).

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes. U.S. EPA is mandating the reduction of an additional four thousand two hundred sixty-three (4,263) tons of NO_x under the NO_x SIP Call Rule for Indiana, but allowing states the flexibility in the way the NO_x is to be reduced. U.S. EPA has issued a guidance memorandum to the states with an "example rule" that was used in the drafting of 326 IAC 10-5. The U.S. EPA has stated that controlling ICEs is a cost-effective way to control NO_x emissions. As far as IDEM is aware, other states that are required to submit NO_x Phase II SIP revisions are reducing NO_x by controlling ICEs.

• Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law; however, reduction of NO_x is required by federal law by 2007. Federal law allows the states flexibility in achieving the required NO_x reductions. Controlling internal engines is just one possible method of control and the one suggested by U.S. EPA's April 21, 2004 final rule (69 FR 21604).

• If it is a federal requirement, is it different from federal law? If the state chooses to regulate ICEs, the rules will incorporate any guidance provided by U.S. EPA.

• If it is different, describe the differences. N/A

- Alternative 2. Reduction of NO_x through control of sources other than internal combustion engines.
- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No, this alternative is not an incorporation of federal standards.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law; however, the reduction of the amount of NO_x tons is required by federal law by 2007. Federal law allows the states flexibility in achieving the required NO_x reductions.
- If it is a federal requirement, is it different from federal law? Federal law states that Phase II NO_x reductions must be made by May 1, 2007, however, U.S. EPA has allowed the states flexibility in achieving these reductions.
- If it is different, describe the differences. The state will have to determine what categories of sources to regulate if the rule does not regulate ICEs.

Applicable Federal Law

The NO_x SIP Call Phase II final rule published on April 21, 2004, amended 40 CFR 51, 40 CFR 78, and 40 CFR 97. IDEM is proposing to amend specific sections of 326 IAC 10-3 and 326 IAC 10-4 to incorporate U.S. EPA's final rule. IDEM is proposing to add new rule 326 IAC 10-5 to control internal combustion engines to obtain the necessary additional NO_x Phase II reductions by May 1, 2007.

Potential Fiscal Impact

Alternative 1.

In U.S. EPA's report titled "Stationary Reciprocating Internal Combustion Engines, Updated Information on NO_x Emissions and Control Techniques", September 1, 2000, the purchased equipment costs are estimated to be \$171,000 for 1,000 brake horsepower (bhp) ICE to \$444,000 for 8,000 bhp. Additional costs would include maintenance, overhead, taxes, insurance, and administration, and annual compliance tests. U.S. EPA estimates a cost of \$1,990 per ton for the control of internal combustion engines using the low emission combustion (LEC) technology. Reductions of four thousand two hundred sixty-three (4,263) tons are required.

If a fiscal impact evaluation is required per IC 4-22-2-28, IDEM will work with affected stakeholders to prepare that evaluation.

Alternative 2.

No determination has been made as to the fiscal impact of any other control method.

Public Participation and Workgroup Information

At this time, no workgroup is formed for the rulemaking; however, IDEM has been working with the affected companies. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Suzanne Whitmer, Rules Section, Office of Air Quality at (317) 232-8229 or (800) 451-6021 (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 particu-

lar 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.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from August 1, 2004, through August 30, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following party by the comment period deadline:

ANR Pipeline (ANR)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: ANR submitted suggested rule language to add definitions for "ozone season", "past NO_x emission rate", "potential ozone season operating hours", and "projected NO_x emission rate" to amend U.S. EPA's draft model rule language.

Response: IDEM has incorporated U.S. EPA's example rule language into this rulemaking. ANR has withdrawn their suggested rule changes in favor of U.S. EPA's rule. IDEM will continue to work with the two (2) affected pipeline companies during the duration of this rulemaking action.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#04-200(APCB)(NO_x Phase II)

Suzanne Whitmer

c/o Administrative Assistant

Rules Development Section

Air Programs Branch

Office of Air Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by February 2, 2005.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 10-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-3-3 Emissions limits

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) After May 31, 2004, an owner or operator of any Portland

cement kiln subject to this rule shall not operate the kiln during the ozone control period of each year unless the owner or operator complies with one (1) of the following:

- (1) Operation of the kiln with one (1) of the following:
 - (A) Low-NO_x burners.
 - (B) Mid-kiln firing.
- (2) A limit on the amount of NO_x emitted when averaged over the ozone control period as follows:
 - (A) For long wet kilns, six (6) pounds of NO_x per ton of clinker produced.
 - (B) For long dry kilns, five and one-tenth (5.1) pounds of NO_x per ton of clinker produced.
 - (C) For preheater kilns, three and eight-tenths (3.8) pounds of NO_x per ton of clinker produced.
 - (D) For precalciner and combined preheater and precalciner kilns, two and eight-tenths (2.8) pounds of NO_x per ton of clinker produced.
- (3) Installation and use of alternative control techniques that may include kiln system modifications, such as conversions to semi-dry precalciner kiln processing, subject to department and U.S. EPA approval, that achieve a thirty percent (30%) emissions decrease from baseline ozone control period emissions. Baseline emissions shall be the average of the sum of ozone control period emissions for the two (2) highest emitting years from 1995 through 2000 determined in accordance with subsection (d)(1).

(b) The owner or operator of any Portland cement kiln proposing to install and use an alternative control technique under subsection (a)(3) shall submit the proposed alternative control technique and calculation of baseline emissions with supporting documentation to the department and U.S. EPA for approval by May 1, 2003. The department shall include the approved plan with emission limitations in the source's operating permit.

(c) The owner or operator of any affected boiler subject to this rule shall limit NO_x emissions to seventeen-hundredths (**0.17**) pound of NO_x per million Btus (~~0.17~~ (lb/MMBtu)) of heat input averaged over the ozone control period and ensure that greater than fifty percent (50%) of the heat input shall be derived from blast furnace gas averaged over an ozone control period. By May 1, 2003, the owner or operator of an affected boiler shall submit to the department a compliance plan for approval by the department and U.S. EPA including the following:

- (1) Baseline stack test data, or proposed testing, for establishment of fuel specific emission factors, or the emission factors for the type of boiler from the Compilation of Air Pollutant Emission Factors (AP-42), Fifth Edition, January 1995*, Supplements A through G, December 2000* as defined at 326 IAC 1-1-3.5 for each fuel to be combusted. The fuel specific emission factor shall be developed from representative emissions testing, pursuant to 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E*, based on a range of typical operating conditions. The owner or operator must:
 - (A) establish that these operating conditions are representative, subject to approval by the department; and ~~must~~
 - (B) certify that the emissions testing is being conducted under representative conditions.
- (2) Anticipated fuel usage and combination of fuels.
- (3) If desired by the source, a proposal for averaging the emission limit and fuel allocation among commonly owned units, including the proposed methodology for determining compliance.
- (d) Baseline ozone control period emissions shall be determined

using one (1) of the following methods:

- (1) The average of the emission factors for the type of kiln from the Compilation of Air Pollutant Emission Factors (AP-42), Fifth Edition, January 1995*, Supplements A through G, December 2000* and the NO_x Control Technologies for the Cement Industry, Final Report, September 19, 2000*.
- (2) The site-specific emission factor developed from representative emissions testing, pursuant to 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E*, based on a range of typical operating conditions. The owner or operator must:
 - (A) establish that these operating conditions are representative, subject to approval by the department; and ~~must~~
 - (B) certify that the emissions testing is being conducted under representative conditions.
- (3) An alternate method for establishing the emissions factors, when submitted with supporting data to substantiate such emissions factors and approved by the department and U.S. EPA as set forth in subsection (b).
- (4) For affected boilers, as outlined in the site-specific compliance plan submitted under subsection (c).

*These documents are incorporated by reference and may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20402 or are available for 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 10-3-3; filed Aug 17, 2001, 3:45 p.m.: 25 IR 16; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1569)

SECTION 2. 326 IAC 10-4-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-1 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) This rule establishes a NO_x emissions budget and NO_x trading program for electricity generating units and large affected units as described in this rule. The following units shall be NO_x budget units, and any source that includes one (1) or more NO_x budget units shall be a NO_x budget source and shall be subject to the requirements of this rule:

- (1) An electricity generating unit (EGU) as defined under section 2(16) of this rule.
- (2) A large affected unit as defined in section 2(27) of this rule.

(b) A unit described under subsection (a) shall not be a NO_x budget unit if the unit has a federally enforceable permit that meets the requirements of subdivisions (1) ~~through (3)~~ and (2):

- (1) The federally enforceable permit includes terms and conditions that restrict the:

- (A) unit to burning only natural gas or fuel oil during the ozone control period in 2004 or the first year of operation for the source and each ozone control period thereafter; **and**
- ~~(2) The federally enforceable permit includes terms and conditions that restrict the~~ (B) unit's potential NO_x mass emissions for the ozone control period to twenty-five (25) tons or less.

~~(3)~~ (2) For each ozone control period, the federally enforceable permit must do the following:

- (A) Restrict the unit to burning only natural gas or fuel oil during an ozone control period in 2004 or later and each ozone control period thereafter.

(B) Include one (1) of the following mechanisms for ensuring that the unit's ozone control period NO_x emissions do not exceed twenty-five (25) tons:

(i) Limit the unit's total actual control period emissions to twenty-five (25) tons of NO_x emissions, measured by a continuous emissions monitoring system (CEMS) in accordance with 40 CFR 75, Subpart H* and section 12 of this rule or monitoring approved under 40 CFR 75, Appendix E*.

(ii) Restrict the unit's **fuel use and** operating hours to the number calculated by dividing twenty-five (25) tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions, where the unit's potential NO_x mass emissions shall be calculated as follows:

(AA) Select the default NO_x emission rate in 40 CFR 75.19(c), Table LM-2* that would otherwise be applicable assuming that the unit burns only the type of fuel, for example, only natural gas or only fuel oil, that has the highest default NO_x emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A). (BB) Multiply the default NO_x emission rate under subitem (AA) by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 2(25) of this rule. The department may approve the lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that the lower value is representative of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(iii) Restrict the unit's usage of each fuel that it is authorized to burn such that the unit's potential NO_x mass emissions will not exceed twenty-five (25) tons per ozone control period, calculated as follows:

(AA) Identify the default NO_x emission rate in 40 CFR 75.19(c), Table LM-2* or an alternative emission rate determined in accordance with 40 CFR 75.19(c)(1)(iv)* for each type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Identify the amount of each type of fuel (in MMBtu) that the unit burned during the ozone control period.

(CC) For each type of fuel identified in subitem (BB), multiply the default NO_x emission rate under subitem (AA) and the amount (in MMBtu) of the fuels burned by the unit during the ozone control period.

(DD) Sum the products in subitem (CC) to verify that the unit's NO_x emissions were equal to or less than twenty-five (25) tons.

(C) Require that the owner or operator of the unit shall retain records, on site at the source or at a central location within Indiana for those owner or operators with unattended sources that includes the unit for a period of five (5) years, demonstrating that the terms and conditions of the permit related to these restrictions were met. Records retained at a central location within Indiana shall be available immediately at the location and submitted to the department or U.S. EPA within three (3) business days following receipt of a written request. Nothing in this clause shall alter the record retention requirements for a source under 40 CFR 75*.

(D) Require that the owner or operator of the unit shall report the unit's **fuel use and** hours of operation, treating any partial hour of operation as a whole hour of operation, or such other parameter as

is being used to demonstrate compliance with the twenty-five (25) ton per ozone control period during each ozone control period to the department by November 1 of each year for which the unit is subject to the federally enforceable permit.

The unit shall be subject only to the requirements of this subsection starting with the effective date of the federally enforceable permit under subdivision (1).

~~(4)~~ (3) Within thirty (30) days after a final decision, the department shall notify the U.S. EPA in writing when a unit under subsection (a):

(A) is issued a federally enforceable permit under this subsection; or

(B) whose federally enforceable permit issued by the department under this subsection:

(i) is revised to remove any restriction;

(ii) includes any restriction that is no longer applicable; or

(iii) does not comply with any restriction.

~~(5)~~ (4) A unit described under this subsection shall be a NO_x budget unit subject to the requirements of this rule if one (1) of the following occurs for any ozone control period:

(A) The fuel use restriction under subdivision ~~(3)(A)~~ (2)(A) or the applicable restriction under subdivision ~~(3)(B)~~ (2)(B) is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable.

(B) The unit does not comply with the fuel use restriction under subdivision ~~(3)(A)~~ (2)(A) or the applicable restriction under subdivision ~~(3)(B)~~ (2)(B).

The unit shall be treated as commencing operation and, for a unit under subsection (a)(1), commencing commercial operation on September 30 of the ozone control period for which the fuel use restriction or the applicable restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the applicable restriction.

~~(6)~~ (5) A unit exempt under this subsection shall comply with the restriction in subdivision ~~(3)~~ (2) during the ozone control period in each year.

~~(7)~~ (6) The department will allocate NO_x allowances to the unit under section 9(d) of this rule. For each control period for which the unit is allocated NO_x allowances under section 9(d) of this rule:

(A) the owners and operators of the unit must specify a general account, in which U.S. EPA will record the NO_x allowances; and (B) after U.S. EPA records the NO_x allowance allocation under section 9(d) of this rule, the U.S. EPA will deduct, from the general account in clause (A), NO_x allowances that:

(i) are allocated for the same or a prior ozone control period as the NO_x allowances allocated under section 9(d) of this rule; and ~~that~~

(ii) equal the NO_x emission limitation (in tons of NO_x) on which the unit's exemption under this subsection is based.

The NO_x authorized account representative shall ensure that the general account contains the NO_x allowances necessary for completion of the deduction.

*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 10-4-1; filed Aug 17, 2001, 3:45 p.m.: 25 IR 18; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3551*)

SECTION 3. 326 IAC 10-4-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-11-2; IC 13-15; IC 13-17

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

- (1) "Account certificate of representation" means the completed and signed submission required by section 6 of this rule for certifying the designation of a NO_x authorized account representative for a NO_x budget source or a group of identified NO_x budget sources who is authorized to represent the owners and operators of the source or sources and of the NO_x budget units at the source or sources with regard to matters under the NO_x budget trading program.
- (2) "Account number" means the identification number given by the U.S. EPA to each NO_x allowance tracking system account.
- (3) "Acid rain emissions limitation" means, as defined in 40 CFR 72.2*, a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program under Title IV of the Clean Air Act (CAA).
- (4) "Allocate" or "allocation" means the determination by the department or the U.S. EPA of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.
- (5) "Automated data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under 40 CFR 75, Subpart H*, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by 40 CFR 75, Subpart H*.
- (6) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other heat transfer medium.
- (7) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.
- (8) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.
- (9) "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation subject to the following:
 - (A) Except as provided in section 3 of this rule, for a unit that is a NO_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.
 - (B) Except as provided in section 3 or 13 of this rule, for a unit that is not a NO_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date the unit becomes a NO_x budget unit under section 1 of this rule shall be

the unit's date of commencement of commercial operation.

- (10) "Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, startup of a unit's combustion chamber subject to the following:
 - (A) Except as provided in section 3 of this rule, for a unit that is a NO_x budget unit under section 1 of this rule on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.
 - (B) Except as provided in section 3 or 13 of this rule, for a unit that is not a NO_x budget unit under section 1 of this rule on the date of commencement of operation, the date the unit becomes a NO_x budget unit under section 1 of this rule shall be the unit's date of commencement of operation.
- (11) "Common stack" means a single flue through which emissions from two (2) or more units are exhausted.
- (12) "Compliance account" means a NO_x allowance tracking system account, established by the U.S. EPA for a NO_x budget unit under section 10 of this rule, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for an ozone control period for the purpose of meeting the unit's NO_x budget emissions limitation.
- (13) "Compliance certification" means a submission to the department or the U.S. EPA, as appropriate, that is required under section 8 of this rule to report a NO_x budget source's or a NO_x budget unit's compliance or noncompliance with this rule and that is signed by the NO_x authorized account representative in accordance with section 6 of this rule.
- (14) "Continuous emission monitoring system" or "CEMS" means the equipment required under 40 CFR 75, Subpart H* to sample, analyze, measure, and provide, by means of readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for NO_x. The following systems are component parts included, consistent with 40 CFR 75*, in a continuous emission monitoring system: using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides (NO_x) emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner consistent with 40 CFR 75.* The following are the principal types of continuous emission monitoring systems required under section 12 of this rule:
 - (A) A flow monitor: monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh).
 - (B) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitors: monitor and an automated DAHS. A NO_x concentration monitoring system provides a permanent, continuous record of NO_x emissions in units of parts per million (ppm).
 - (C) Diluent gas monitor; oxygen or carbon dioxide; when the monitoring is required by 40 CFR 75, Subpart H*: A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of:
 - (i) a NO_x pollutant concentration monitor;
 - (ii) a diluent gas (CO₂ or O₂) monitor; and
 - (iii) an automated DAHS.
 A NO_x concentration monitoring system provides a permanent, continuous record of NO_x concentration in units of parts per million (ppm) and diluent gas concentration in units of percent

O₂ or CO₂ (percent O₂ or CO₂) and NO_x emission rate in units of pounds per million British thermal units.

(D) ~~A continuous moisture monitor when the monitoring system is required by 40 CFR 75, Subpart H*. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent H₂O (percent H₂O).~~

(E) An automated data acquisition and handling system.

(15) "Electricity for sale under firm contract to the grid" means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

(16) "Electricity generating unit" or "EGU" means the following:

(A) For units other than cogeneration units commencing operation:

~~(A) For units that commenced operation (i) before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid;~~

~~(B) For units that commenced operation (ii) on or after January 1, 1997, and before January 1, 1999, a unit serving a generator during 1997 or 1998 that had a nameplate capacity greater than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid; or~~

~~(C) For units that commenced operation (iii) on or after January 1, 1999, a unit serving a generator at any time that has a nameplate capacity greater than twenty-five (25) megawatts and produces electricity for sale.~~

(B) For cogeneration units commencing operation:

(i) before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit for 1995 or 1996 under the acid rain program;

(ii) in 1997 or 1998, a unit serving a generator during 1997 or 1998 with a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit for 1997 or 1998 under the acid rain program; or

(iii) on or after January 1, 1999, a unit serving at any time as a generator with a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit under the acid rain program for any year.

(17) "Emissions", for the purpose of this rule, means nitrogen oxides exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the NO_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

(18) "Energy efficiency or renewable energy projects" means any of the following implemented in Indiana:

(A) End-use energy efficiency projects, including demand-side management programs.

(B) Highly efficient electricity generation for the predominant use of a single end-user, such as combined cycle, combined heat and power, microturbines, and fuel cell systems. In order to be considered as highly efficient electricity generation under this clause, combined cycle, combined heat and power, microturbines, and fuel cell generating systems must meet or exceed the following thresholds:

(i) For combined heat and power projects generating both electricity and thermal energy for space, water, or industrial process heat, rated energy efficiency of sixty percent (60%).

(ii) For microturbine projects rated at or below five hundred (500) kilowatts generating capacity, rated energy efficiency of forty percent (40%).

(iii) For combined cycle projects rated at greater than five hundred (500) kilowatts, rated energy efficiency of fifty percent (50%).

(iv) For fuel cell systems, rated energy efficiency of forty percent (40%), whether or not the fuel cell system is part of a combined heat and power energy system.

(C) Zero-emission renewable energy projects, including wind, photovoltaic, and hydropower projects. Eligible hydropower projects are restricted to systems employing a head of ten (10) feet or less or systems employing a head greater than ten (10) feet that make use of a dam that existed prior to the effective date of this rule.

(D) Energy efficiency projects generating electricity through the capture of methane gas from municipal solid waste landfills, water treatment plants, sewage treatment plants, or anaerobic digestion systems operating on animal or plant wastes.

(E) The installation of highly efficient electricity generation equipment for the sale of power where such equipment replaces or displaces retired electrical generating units. In order to be considered as highly efficient under this clause, generation equipment must meet or exceed the following energy efficiency thresholds:

(i) For coal-fired electrical generation units, rated energy efficiency of forty-two percent (42%).

(ii) For natural gas-fired electrical generating units, rated energy efficiency of fifty percent (50%).

(F) Improvements to existing fossil fuel fired electrical generation units that increase the efficiency of the unit and decrease the heat rate used to generate electricity.

Energy efficiency or renewable energy projects do not include nuclear power projects. This definition is solely for the purposes of implementing this rule and does not apply in other contexts.

(19) "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

(20) "Excess emissions" means any tonnage of NO_x emitted by a NO_x budget unit during an ozone control period that exceeds the NO_x budget emissions limitation for the unit.

(21) "Fossil fuel" means any of the following:

(A) Natural gas.

(B) Petroleum.

(C) Coal.

(D) Any form of solid, liquid, or gaseous fuel derived from the above material.

(22) "Fossil fuel-fired" means, with regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, under any of the following scenarios:

(A) Fossil fuel actually combusted comprises more than fifty percent (50%) of the annual heat input on a British thermal unit (Btu) basis during any year starting in 1995. If a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995.

(B) Fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input on a Btu basis during any year, provided that the unit shall be fossil fuel-fired as of the date, during the year, that the unit begins combusting fossil fuel.

(23) "General account" means a NO_x allowance tracking system account, established under section 10 of this rule, that is not a compliance account or an overdraft account.

(24) "Generator" means a device that produces electricity.

(25) "Heat input" means the product, in million British thermal units per unit of time (MMBtu/time), of the following:

(A) The gross calorific value of the fuel, in British thermal units per pound (Btu/lb).

(B) The fuel feed rate into a combustion device, in mass of fuel per unit of time (lb/time), as measured, recorded, and reported to the U.S. EPA by the NO_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(26) "Heat input rate" means the amount of heat input (in MMBtu) divided by unit operating time (in hours) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in MMBtu) divided by the unit operating time (in hours) during which the unit combusts the fuel.

(27) "Large affected unit" means the following:

(A) For units other than cogeneration units that commenced operation:

(A) For units that commenced operation (i) before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid;

(B) For units that commenced operation (ii) on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid; or

(C) For units that commence operation (iii) on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour that:

(i) (AA) at no time serves a generator producing electricity for sale; or

(ii) (BB) at any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five (25) megawatts or less and has the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit.

(B) For cogeneration units commencing operation:

(i) before January 1, 1997, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and qualifying as an unaffected unit under the acid rain program for 1995 and 1996;

(ii) in 1997 or 1998, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and qualifying as an unaffected unit under the acid rain program for 1997 and 1998; or

(iii) on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and qualifying as an unaffected unit under the acid rain program for each year.

Large affected unit does not include a unit subject to 326 IAC 10-3.

(28) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy

from any specified unit and pays its proportional amount of the unit's total costs, pursuant to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(29) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(30) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. The unit may use either of the following:

(A) 40 CFR 75, Appendix D* to report heat input. Calculate this value in accordance with 40 CFR 75*, using the maximum fuel flow rate and the maximum gross calorific value.

(B) A flow monitor and a diluent gas monitor. Report this value in accordance with 40 CFR 75*, using the maximum potential flow rate and either of the following:

(i) The maximum carbon dioxide (CO₂) concentration, in percent of CO₂.

(ii) The minimum oxygen (O₂) concentration, in percent of O₂.

(31) "Maximum potential NO_x emission rate" means:

(A) the emission rate of nitrogen oxides, in pounds per million British thermal units (lb/MMBtu);

(B) calculated in accordance with 40 CFR 75, Appendix F, Section 3*;

(C) using the maximum potential nitrogen oxides concentration as defined in 40 CFR 75, Appendix A, Section 2*; and

(D) either the:

(i) maximum oxygen (O₂) concentration in percent of O₂; or

(ii) minimum carbon dioxide (CO₂) concentration in percent of CO₂;

under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(32) "Maximum rated hourly heat input" means a unit-specific maximum hourly heat input, in million British thermal units (MMBtu), that is the higher of either the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(33) "Monitoring system" means any monitoring system that meets the requirements of 40 CFR 75, Subpart H*, including the following:

(A) A continuous emissions monitoring system.

(B) An excepted monitoring system under 40 CFR 75.19* or 40 CFR 75, Appendix D or E*.

(C) An alternative monitoring system.

(34) "Most stringent state or federal NO_x emissions limitation" means with regard to a NO_x budget opt-in source, the lowest NO_x emissions limitation, in terms of pounds per million British thermal units (lb/MMBtu), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(35) "Nameplate capacity" means the maximum electrical generating output, in megawatt electrical (MWe), that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States

Department of Energy standards.

(36) "Nontitle V permit" means a federally enforceable permit issued by the department under 326 IAC 2-8.

(37) "NO_x allowance" means an authorization by the department or the U.S. EPA under the nitrogen oxides (NO_x) budget trading program to emit up to one (1) ton of NO_x during the ozone control period of the specified year or of any year thereafter, except as provided in section 14(b) of this rule. ~~"NO_x allowance"~~ **The term** also includes an authorization to emit up to one (1) ton of nitrogen oxides during the ozone control period of the specified year or of any year thereafter by the U.S. EPA under 40 CFR 97* or by a permitting authority in accordance with a state NO_x budget trading program established pursuant to 40 CFR 51.121* and approved and administered by the U.S. EPA.

(38) "NO_x allowance deduction" or "deduct NO_x allowances" means the permanent withdrawal of NO_x allowances by the U.S. EPA from a NO_x allowance tracking system compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x budget unit for an ozone control period, determined in accordance with 40 CFR 75, Subpart H* and section 12 of this rule, or for any other allowance surrender obligation under this rule.

(39) "NO_x allowance tracking system" means the system by which the U.S. EPA records allocations, deductions, and transfers of NO_x allowances under the NO_x budget trading program.

(40) "NO_x allowance tracking system account" means an account in the NO_x allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(41) "NO_x allowance transfer deadline" means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x budget emissions limitation for the ozone control period immediately preceding the deadline.

(42) "NO_x allowances held" or "hold NO_x allowances" means the NO_x allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 10 and 11 of this rule, in a NO_x allowance tracking system account.

(43) "NO_x authorized account representative" means either of the following:

(A) For a NO_x budget source or NO_x budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x budget units at the source, in accordance with section 6 of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO_x budget trading program.

(B) For a general account, the natural person who is authorized, in accordance with section 10 of this rule, to transfer or otherwise dispose of NO_x allowances held in the general account.

(44) "NO_x budget emissions limitation" means, for a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for an ozone control period under sections 10(i) and 10(k) of this rule, adjusted by any deductions of the NO_x allowances for any of the following reasons:

(A) To account for:

(i) excess emissions for a prior ozone control period under section 10(k)(5) of this rule; **or**

~~(B) To account for~~ (ii) withdrawal from the NO_x budget trading program.

~~(C)~~ (B) For a change in regulatory status, for a NO_x budget opt-in source under section 13(g) through 13(i) of this rule.

(45) "NO_x budget opt-in permit" means a NO_x budget permit covering a NO_x budget opt-in source.

(46) "NO_x budget opt-in source" means a source that includes one (1) or more NO_x budget units:

(A) that has elected to become a NO_x budget source under the NO_x budget trading program; and

(B) whose NO_x budget opt-in permit has been issued and is in effect under section 13 of this rule.

(47) "NO_x budget permit" means the legally binding and federally enforceable written document or portion of the document:

(A) issued by the department under this rule, including any permit revisions; and

(B) specifying the NO_x budget trading program requirements applicable to the following:

(i) A NO_x budget source.

(ii) Each NO_x budget unit at the NO_x budget source.

(iii) The owners and operators and the NO_x authorized account representative of the NO_x budget source and each NO_x budget unit.

(48) "NO_x budget source" means a source that includes one (1) or more NO_x budget units.

(49) "NO_x budget trading program" means a multistate nitrogen oxides air pollution control and emission reduction program established in accordance with this rule, 40 CFR 97*, and a state NO_x budget trading program established pursuant to 40 CFR 51.121* and approved and administered by the U.S. EPA as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(50) "NO_x budget unit" means a unit that is subject to the NO_x budget ~~trading program~~ emissions limitation under section 1(a) or 13(a) of this rule.

(51) "Operating" means, with regard to a unit under sections 7(c)(4)(B) and 13(a) of this rule, having documented heat input for more than eight hundred seventy-six (876) hours in the six (6) months immediately preceding the submission of an application for an initial NO_x budget permit under section 13(d) of this rule.

(52) "Operator" means any person who operates, controls, or supervises a NO_x budget unit, a NO_x budget source, or a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of a unit or source.

(53) "Opt-in" means to elect to become a NO_x budget unit under the NO_x budget trading program through a final, effective NO_x budget opt-in permit under section 13 of this rule.

(54) "Overdraft account" means the NO_x allowance tracking system account, established by the U.S. EPA under section 10 of this rule, for each NO_x budget source where there are two (2) or more NO_x budget units.

(55) "Owner" means any of the following persons:

(A) Any holder of:

(i) any portion of the legal or equitable title; ~~in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn; or~~

~~(B) Any holder of~~ (ii) a leasehold interest;

in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

~~(C)~~ (B) Any purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or

withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(C) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(56) "Ozone control period" means the period as follows:

(A) For 2004, beginning May 31 and ending on September 30, inclusive.

(B) For 2005 and each year thereafter, beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(57) "Percent monitor data availability" means, for purposes of sections 13(e)(2) and 15(b)(1)(D) of this rule, total unit operating hours for which quality-assured data were recorded under 40 CFR 75, Subpart H* and section 12 of this rule in a control period, divided by the total number of unit operating hours per control period, and multiplied by one hundred percent (100%).

(58) "Potential electrical output capacity" means thirty-three percent (33%) of a unit's maximum design heat input.

(59) "Rated energy efficiency" means the percentage of gross energy input that is recovered as useable net energy output in the form of electricity or thermal energy, or both, that is used for heating, cooling, industrial processes, or other beneficial uses as follows:

(A) For electric generators, rated energy efficiency is calculated as one (1) net kilowatt hour (three thousand four hundred twelve (3,412) British thermal units) of electricity divided by the unit's design heat rate using the higher heating value of the fuel.

(B) For combined heat and power projects, rated energy efficiency is calculated using the following formula:

$$\text{Eff}\% = (\text{NEO} + \text{UTO})/\text{GEI}$$

Where: Eff% = Rated energy efficiency.

NEO = Net electrical output of the system converted to British thermal units per unit of time.

UTO = Utilized thermal output or the energy value in British thermal units of thermal energy from the system that is used for heating, cooling, industrial processes, or other beneficial uses, per unit of time.

GEI = Gross energy input, based upon the higher heating value of fuel, per unit of time.

(60) "Receive" or "receipt of" means, when referring to the department or the U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in writing or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or the U.S. EPA in the regular course of business.

(61) "Recordation", "record", or "recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the U.S. EPA from one (1) NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(62) "Reference method" means any direct test method of sampling

and analyzing for an air pollutant as specified in 40 CFR 60, Appendix A*.

(63) "Repowered natural gas-fired generating unit", for the purposes of this rule, means an electricity generating unit that is fueled by natural gas and provides steam to a generation turbine that was previously served by a coal-fired unit that was retired in 2000 or later.

(64) "Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the U.S. EPA, under section 10(e) through 10(g) of this rule.

(65) "Source" means any governmental, institutional, commercial, or industrial:

(A) structure;

(B) installation;

(C) plant;

(D) building; or

(E) facility;

that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of Section 502(c) of the CAA, a source, including a source with multiple units, shall be considered a single facility.

(66) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(A) in person;

(B) by United States Postal Service; or

(C) by other means of dispatch or transmission and delivery.

Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(67) "Title V operating permit" means a permit issued under 326 IAC 2-7.

(68) "Title V operating permit regulations" means the rules under 326 IAC 2-7.

(69) "Ton" or "tonnage" means any short ton, two thousand (2,000) pounds. For the purpose of determining compliance with the NO_x budget emissions limitation, total tons for an ozone control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 CFR 75, Subpart H*, with any remaining fraction of a ton equal to or greater than fifty-hundredths (0.50) ton deemed to equal one (1) ton and any fraction of a ton less than fifty-hundredths (0.50) ton deemed to equal zero (0) tons.

(70) "Trading program budget" means the total number of NO_x tons apportioned to all NO_x budget units, in accordance with the NO_x budget trading program, for use in a given ozone control period.

(71) "Unit" means a fossil fuel-fired:

(A) stationary boiler;

(B) combustion turbine; or

(C) combined cycle system.

(72) "Unit operating day" means a calendar day in which a unit combusts any fuel.

(73) "Unit operating hour" or "hour of unit operation" means any hour, or fraction of an hour, during which a unit combusts any fuel.

(74) "United States Environmental Protection Agency" or "U.S. EPA" means the administrator of the U.S. EPA or the administrator's duly authorized representative. The department authorizes the U.S. EPA to assist the department in implementing this rule by carrying out the functions set forth for the U.S. EPA in this rule.

(75) "Utilization" means the heat input, expressed in million British thermal units per unit of time, for a unit. The unit's total heat input for the ozone control period in each year shall be:

(A) determined in accordance with 40 CFR 75* if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75* for the year; or ~~shall be~~

(B) based on the best available data reported to the U.S. EPA for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75* for the year.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-2; filed Aug 17, 2001, 3:45 p.m.: 25 IR 19; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1183; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3552*)

SECTION 4. 326 IAC 10-4-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-3 Retired unit exemption

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) This section applies to any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired.

(b) Any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired shall be exempt from the NO_x budget trading program, except for the provisions of this section and sections 1, 2, 5, and 9 through 11 of this rule.

(c) An exemption under this section shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO_x authorized account representative, authorized in accordance with section 6 of this rule, shall submit a notice to the department and the U.S. EPA. The notice shall state, in a format prescribed by the department, that the unit:

- (1) is permanently retired; and
- (2) shall comply with the requirements of subsection (e).

(d) After receipt of the notice under subsection (c), the department shall amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subsections (b) and (e).

(e) A unit exempt under this section shall comply with the following provisions:

- (1) The unit shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.
- (2) The owners and operators of the unit shall be allocated allowances in accordance with section 9 of this rule. For each ozone control period for which the unit is allocated one (1) or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which U.S. EPA will record the NO_x allowances.
- (3) If the unit is located at a source that is required or, but for this exemption, would be required to have an operating permit under 326 IAC 2-7, the unit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days ~~prior to before~~ the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(4) If the unit is located at a source that is required or, but for this exemption, would be required to have a FESOP permit under 326 IAC 2-8, the unit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days ~~prior to before~~ the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(5) The owners and operators and, to the extent applicable, the NO_x authorized account representative shall comply with the requirements of the NO_x budget trading program concerning all periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.

(6) A unit that is exempt under this section is not eligible to be a NO_x budget opt-in unit under section 13 of this rule.

(7) The owners and operators shall retain records at the source, or at a central location within Indiana for those owners or operators with unattended sources, demonstrating that the unit is permanently retired for a period of five (5) years. The five (5) year period for keeping records may be extended for cause, at any time ~~prior to before~~ the end of the period, in writing by the department or the U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired. Records retained at a central location within Indiana shall be available immediately at the location and submitted to the department or U.S. EPA within three (3) business days following receipt of a written request. Nothing in this subdivision shall alter the record retention requirements for a source under 40 CFR 75*.

(8) A unit exempt under subsection (b) shall lose its exemption on the earlier of the ~~following dates:~~ **date on which the:**

(A) ~~The date on which the~~ NO_x authorized account representative: (i) submits a NO_x budget permit application under subdivision (3) or (4); or

(B) ~~The date on which the~~ NO_x authorized account representative (ii) is required under subdivision (3) or (4) to submit a NO_x budget permit application; or

(B) unit resumes operation, if the unit is not required to submit a permit application for NO_x.

For the purpose of applying monitoring requirements under 40 CFR 75, Subpart H*, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

*These documents are incorporated by reference, and copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for 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 10-4-3; filed Aug 17, 2001, 3:45 p.m.: 25 IR 25; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1569*)

SECTION 5. 326 IAC 10-4-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-9 NO_x allowance allocations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 9. (a) The trading program budget allocated by the department

under subsections (d) through (f) for each ozone control period shall equal the total number of tons of NO_x emissions apportioned to the NO_x budget units under section 1 of this rule for the ozone control period, as determined by the procedures in this section. The total number of tons of NO_x emissions that are available for each ozone control period for allocation as NO_x allowances under this rule are fifty-five thousand seven hundred twenty-nine (55,729) tons apportioned as follows:

(1) For existing units:

(A) forty-three thousand six hundred fifty-four (43,654) tons for electricity generating units in 2004 through 2009 and forty-five thousand thirty-three (45,033) tons thereafter; and

(B) eight thousand five hundred sixty-four (8,564) tons for large affected units;

less the sum of the NO_x limitations (in tons) for each unit under section 1(b) of this rule that is not allocated any NO_x allowances under subsection (d) for the ozone control period and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under subsection (e) for the control period.

(2) For new unit allocation set-asides:

(A) two thousand two hundred ninety-eight (2,298) tons for electricity generating units in 2004 through 2009, and nine hundred nineteen (919) tons thereafter; and

(B) ninety-eight (98) tons for large affected units in 2004 and each year thereafter.

(3) For the energy efficiency and renewable energy allocation set-aside, one thousand one hundred fifteen (1,115) tons.

(b) The department shall allocate NO_x allowances to NO_x budget units according to the following schedule:

(1) For EGUs, a three (3) year allocation that is recorded three (3) years in advance of the ozone control period that the allowances may be used as follows:

(A) Within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods in 2004, 2005, and 2006.

(B) By December 31, 2003, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2007, 2008, and 2009.

(C) By December 31, 2006, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2010, 2011, and 2012.

(D) By December 31, 2009, and by December 31 every three (3) years thereafter, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods four (4) years, five (5) years, and six (6) years after the year of the allowance allocation.

(2) For large affected units, within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the NO_x allowances for the ozone control periods in 2004 through 2009. By December 31, 2006, the department shall review the allocations in light of emission trends, new units, and other relevant factors to determine whether revisions are appropriate.

(3) If the department fails to submit to the U.S. EPA the NO_x allowance allocations in accordance with this rule, the U.S. EPA will allocate, for the applicable ozone control period, the same number of NO_x allowances as were allocated for the preceding ozone control period.

(4) The department shall:

(A) make available for review to the public the NO_x allowance allocations under subdivision (1)(B), (1)(C), and (1)(D) on

December 31 of each year cited in subdivision (1)(B), (1)(C), and (1)(D); and ~~shall~~

(B) provide a thirty (30) day opportunity for submission of objections to the NO_x allowance allocations.

Objections shall be limited to addressing whether the NO_x allowance allocations are in accordance with this section. Based on any such objections, the department shall consider any objections and input from affected sources and, if appropriate, adjust each determination to the extent necessary to ensure that it is in accordance with this section. Any revised NO_x allowance allocations shall be submitted to the U.S. EPA for recordation by the following April 1.

(c) The heat input, in million British thermal units (MMBtu), used for calculating NO_x allowance allocations for each NO_x budget unit under section 1 of this rule shall be:

(1) For a NO_x allowance allocation under:

(A) subsection (b)(1)(A), the average of the two (2) highest amounts of the unit's heat input for the ozone control periods in 1995 through 1999; and

~~(2) For a NO_x allowance allocation under (B)~~ subsection (b)(1)(B) through (b)(1)(D), the unit's average of the two (2) highest heat inputs for the ozone control period in the years that are one (1), two (2), three (3), four (4), and five (5) years before the year when the NO_x allocation is being calculated.

For the purpose of this subdivision, the ozone control period for the year 2004 shall be from May 1 through September 30.

~~(2)~~ (2) If a NO_x budget unit does not have a full five (5) years of ozone control period heat inputs, the following shall apply for a NO_x budget unit:

(A) ~~For a NO_x budget unit~~ With ozone control period heat inputs for more than two (2) years, the average of the two (2) highest ozone control period heat inputs.

(B) ~~For a NO_x budget unit~~ With two (2) years of ozone control period heat input, the average of the ozone control period heat input for the two (2) years.

(C) ~~For a NO_x budget unit~~ With one (1) year of ozone control period heat input, the actual ozone control period heat input for that year.

~~(3)~~ (3) For a NO_x allowance allocation under subsection (b)(1)(B) ~~(b)(1)(C); and~~ through (b)(1)(D) for a unit exempt under section 1(b) of this rule, the heat input shall be treated as zero (0) if the unit was exempt during the previous allocation period.

The unit's total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR 75* if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75* for the year or shall be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75* for the year. The owner or operator of a NO_x budget unit shall submit heat input data within thirty (30) days if requested by the department.

(d) For each ozone control period under subsection (b), the department shall allocate to all NO_x budget units that have been in operation for at least one (1) year ~~prior to before~~ the year in which allocations are made, and for new NO_x budget units that have commenced operation on or after May 1, 2000, and that have not submitted notification in accordance with subsection (i), a total number of NO_x allowances equal to the amount under subsection (a)(1), in accordance with the following procedures:

(1) The department shall allocate NO_x allowances to each electricity generating unit in an amount equaling:

(A) fifteen-hundredths (0.15) pound per million British thermal

units; or

(B) the allowable emission rate as of the date that the unit becomes affected by this rule;

whichever is more stringent, except that a coal-fired electrical generation unit with a rated energy efficiency of forty percent (40%) or higher, a repowered natural gas-fired electrical generating unit with a rated energy efficiency of forty-five percent (45%) or higher, a natural gas-fired electrical generating unit, that is not repowered, with a rated energy efficiency of fifty percent (50%) or higher, or a combined heat and power unit with an overall rated energy efficiency of sixty percent (60%) or higher shall be allocated allowances based on fifteen-hundredths (0.15) lb/MMBtu notwithstanding the allowable emission rate, multiplied by the heat input determined under subsection (c) and the product divided by two thousand (2,000) pounds per ton, rounded to the nearest whole NO_x allowance, as appropriate.

(2) If the initial total number of NO_x allowances allocated to all electricity generating units for an ozone control period under subdivision (1) does not equal the amount under subsection (a)(1), the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (1) so that the total number of NO_x allowances allocated equals the amount under subsection (a)(1). This adjustment shall be made by:

(A) multiplying each unit's allocation by the amount under subsection (a)(1); and

(B) dividing by the total number of NO_x allowances allocated under subdivision (1) and rounding to the nearest whole NO_x allowance, as appropriate.

(3) The department shall allocate NO_x allowances to each large affected unit in an amount equaling the following:

<u>Source</u>	<u>Unit</u>	<u>Allowances</u>
(A) Alcoa	1	1,089
	2	1,057
	3	1,026
(B) American Electric Power-Rockport	Auxiliary Boiler 1	2
	Auxiliary Boiler 2	1
(C) BP Amoco-Boiler House 1	1	21
	2	21
	3	21
	4	21
	5	22
(D) BP Amoco-Boiler House 3	1	252
	2	252
	3	252
	4	252
	5	252
(E) Citizens Thermal Energy	11	120
	12	138
	13	85
	14	75
	15	54
	16	69
(F) Ispat Inland	211	110
	212	110
	213	109
	401	255
	402	255
	403	257
	404	257
	405	344
	501	137
	502	137
	503	137
(G) New Energy	003	238
(H) Portside Energy	Auxiliary Boiler 1	50
	Auxiliary Boiler 2	5
	Combustion Turbine	34
(I) Purdue University	1	90
	2	91

(J) U.S. Steel-Gary Works

3	8
5	72
720	107
Boiler #1	
720	107
Boiler #2	
720	107
Boiler #3	
701	78
Boiler #1	
701	78
Boiler #2	
701	78
Boiler #3	
701	86
Boiler #5	
701	145
Boiler #6	

For units having an emission limitation only in tons on an annual basis, the allowable emission rate in pounds per million Btu (lb/MMBtu) shall be determined by dividing the emission limitation by eight thousand seven hundred sixty (8,760) hours, multiplying by two thousand (2,000) pounds, and dividing the result by the unit's permitted heat input rate. For units having an emission limitation only in parts per million (ppm), the conversion factors under 326 IAC 3-4-3 shall be used.

(e) For new NO_x budget units that commenced operation, or are projected to commence operation, on or after May 1, 2000, or for projects that reduce NO_x emissions through the implementation of energy efficiency or renewable energy measures, or both, implemented during an ozone control period beginning May 1, 2004, the department shall allocate NO_x allowances in accordance with the following procedures:

(1) The department shall establish allocation set-asides for new NO_x budget units and for energy efficiency and renewable energy projects for each ozone control period as follows:

(A) The new unit allocation set-asides shall be allocated NO_x allowances equal to the following:

(i) For EGUs, two thousand two hundred ninety-eight (2,298) tons (five percent (5%) of EGU budget) for each ozone control period in 2004 through 2009, and nine hundred nineteen (919) tons (two percent (2%) of the EGU budget) for each ozone control period thereafter.

(ii) For large affected units, ninety-eight (98) tons (one percent (1%) of the large affected unit budget) in 2004 and each year thereafter.

(B) The energy efficiency and renewable energy allocation set-aside shall be allocated NO_x allowances equal to one thousand one hundred fifteen (1,115) tons (two percent (2%) of overall trading budget).

(2) The NO_x authorized account representative of a new NO_x budget unit or a general account may submit to the department a request, in writing or in a format specified by the department, for NO_x allowances as follows:

(A) For a new NO_x budget unit, for one (1) ozone control period under subsection (b), during which the NO_x budget unit commenced, or is projected to commence, operation. The NO_x authorized account representative shall reapply each year until the NO_x budget unit is eligible to use NO_x allowances allocated under

subsection (d).

(B) For energy efficiency or renewable energy projects, project sponsors may request the reservation of NO_x allowances for one (1) control period in which the project is implemented. The NO_x authorized account representative may reapply each year, not to exceed five (5) ozone control periods. Requests for allowances may be made only for projects implemented within two (2) years of the beginning of the first ozone control period for which allowances are requested. Projects must equal at least one (1) ton of NO_x emissions, and multiple projects may be aggregated into one (1) allowance allocation request to equal one (1) or more tons of NO_x emissions.

The NO_x allowance allocation request must be submitted by September 1 of the calendar year that is one (1) year in advance of the first ozone control period for which the NO_x allowance allocation is requested and for new NO_x budget units, after the date on which the department issues a permit to construct the NO_x budget unit and final approval is granted from the Indiana utility regulatory commission.

(3) In a NO_x allowance allocation request under this subsection, the NO_x authorized account representative may request for an ozone control period, NO_x allowances in an amount that does not exceed the following:

(A) For an electricity generating unit, multiplying: ~~the following:~~

(i) fifteen-hundredths (0.15) pound per million British thermal units or the allowable emission rate as of the date that the unit becomes affected by this rule, whichever is more stringent, except that a coal-fired electrical generation unit with a rated energy efficiency of forty percent (40%) or higher, a repowered natural gas-fired electrical generating unit with a rated energy efficiency of forty-five percent (45%) or higher, a natural gas-fired electrical generating unit that is not repowered with a rated energy efficiency of fifty percent (50%) or higher, or a combined heat and power unit with an overall rated energy efficiency of sixty percent (60%) or higher shall be allocated allowances based on fifteen-hundredths (0.15) lb/MMBtu notwithstanding the allowable emission rate;

(ii) the NO_x budget unit's maximum design heat input in million British thermal units per hour ~~as follows: for a unit that is:~~

(AA) ~~For a unit that is~~ permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is not a simple cycle system, seventy-five percent (75%) of the maximum design heat input;

(BB) For a unit that is not permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is a combined cycle system, fifty percent (50%) of the maximum design heat input; or

(CC) For a unit that is not permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is not combined cycle system or for a unit that is permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is a simple cycle system, twenty-five percent (25%) of the maximum design heat input; and

(iii) the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate; and dividing the product by two thousand (2,000) pounds per ton and rounded to the nearest ton. The NO_x allowances requested shall not exceed annual allowable NO_x emissions.

(B) For a large affected unit multiplying:

(i) the lesser of:

(+) (AA) seventeen-hundredths (0.17) pound per million British thermal units; or

(BB) the allowable emission rate as of the date that the unit becomes affected by this rule, whichever is more stringent;

(ii) the NO_x budget unit's maximum design heat input in million British thermal units per hour; and

(iii) the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate; and dividing the product by two thousand (2,000) pounds per ton and rounded to the nearest ton. The NO_x allowances requested shall not exceed annual allowable NO_x emissions.

(C) For energy efficiency or renewable energy projects, the following:

(i) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by end-users or nonutility third parties receive allowances based upon the number of kilowatt hours of electricity saved during an ozone control period and the following formula:

$$\text{Allowances} = (\text{kWS} * 0.0015) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(ii) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by NO_x allowance account holders that own or operate units that produce electricity and are subject to the emission limitations of this rule will be awarded allowances according to the following formula:

$$\text{Allowances} = (\text{kWS} * 0.000375) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(iii) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are not NO_x budget units will be awarded allowances according to the following formula:

$$\text{Allowances} = (((\text{Et1}/\text{Pt1}) - (\text{Et2}/\text{Pt2})) \times \text{Pt2} \times \text{NPt2} \times (\text{NPt1}/\text{NPt2})) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period prior to before project implementation.

Pt1 = Units of product produced per ozone control period prior to before project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NPt1 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units prior to before project implementation.

NPt2 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units in the most recent ozone control period.

(iv) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are NO_x budget units will be awarded allowances according to the following formula:

$$\text{Allowances} = (((\text{Et1}/\text{Pt1}) - (\text{Et2}/\text{Pt2})) \times \text{Pt2} \times \text{NPt2} \times (\text{NPt1}/\text{NPt2}) \times 0.25) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period prior to before project implementation.

Pt1 = Units of product produced per ozone control period prior to before project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NPt1 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units prior to before project implementation.

NPt2 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units in the most recent ozone control period.

Product produced, as used in these the formulas in this item and item (iii), may include manufactured items; raw, intermediate, or final materials; or other products measured in discrete units and produced as a result of the consumption of energy in a specific process or piece of equipment. Claims for allowances must include documentation of NO_x emissions per British thermal unit both before and after implementation of the project

for the energy-consuming process for which energy savings are claimed.

(v) Projects in section 2(18)(B) of this rule that claim allowances based upon highly efficient electricity generation using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end-user that meet the thresholds specified in section 2(18)(B) of this rule, that are not electric generating units or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties receive allowances based upon the net amount of electricity generated during an ozone control period and the following formula:

$$\text{Allow} = (\text{kWG} \times (0.0015 - \text{NO}_x)) / 2000$$

Where: Allow = The number of allowances awarded to a project sponsor.
 kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.
 NO_x = The amount of NO_x produced during the generation of electricity measured in pounds per kilowatt hour.

(vi) Projects in section 2(18)(B) of this rule that claim allowances based upon highly efficient combined heat and power systems for the predominant use of a single end-user that meet the thresholds specified in section 2(18)(B) of this rule, that are not electric generating units or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties receive allowances based upon the net amount of energy generated and used during an ozone control period and the following formula:

$$\text{Allow} = ((\text{BtuIn} \times \text{Efficiency}) / 3,412) \times (0.0015 - (\text{NO}_x \text{Rate} / \text{EnRate})) / 2000 \quad (\text{NO}_x \text{ convt} - \text{NO}_x \text{ CHP}) / 2,000$$

Where: Allow = The number of allowances awarded to a project sponsor.
 NO_x convt = $[(0.15 \times 3,412 \times \text{kWG} / 0.34) + (0.17 \times \text{HeatOut} / 0.8)] / 1,000,000$
 NO_x CHP = $(\text{BtuIn} \times \text{NO}_x \text{Rate}) / 1,000,000$
 kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.
 BtuIn = The number of British thermal units (Btu) of fuel used to produce electricity, heat, or steam during an ozone control period by the project.
 Efficiency = The effective net efficiency of a combined heat and power system, calculated as $(\text{kWG} \times 3,412) / (\text{BtuIn} - \text{HeatOut})$.
 Where: kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.
 HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during an ozone control period by the project divided by eight-tenths (0.8).

NO_xRate = NO_x emitted during normal system operation by the project measured in pounds per hour of normal system operation: million Btu of fuel input.

EnRate = The amount of energy measured in British thermal units (Btu) of electricity generated and heat or steam effectively used for space, water, or industrial process heat per hour of normal system operation, divided by three thousand four hundred twelve (3,412):

(vii) Projects in section 2(18)(D) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period. Highly efficient electricity generation projects using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end-user that meet a rated energy efficiency threshold of sixty percent (60%) for combined cycle systems and forty percent (40%) for microturbines and fuel cells and that are sponsored by NO_x allowance account holders that own or operate units that produce electricity and are subject to the emission limitations of this rule will receive allowances based upon the net amount of electricity generated during an ozone control period and the following formula:

$$\text{Allowances} = (\text{kWG} * (0.0015 - \text{NO}_x) * 0.25) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.
 kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.
 NO_x = The amount of NO_x produced during the generation of electricity measured in pounds per kilowatt hour.

(viii) Projects in section 2(18)(C) and 2(18)(D) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period and according to the following formula:

$$\text{Allowances} = (\text{kWG} * 0.0015) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.
 kWG = The number of kilowatt hours of electricity generated during an ozone control period by the project.

(ix) Projects in section 2(18)(E) and 2(18)(F) of this rule receive allowances based upon the difference in emitted NO_x per megawatt hour of operation for units before and after replacement or improvement and according to the following formula:

$$\text{Allowances} = ((\text{Et1} - \text{Et2}) * \text{h}) * 0.25 / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.
 Et1 = The emission rate in pounds per megawatt hour of NO_x of the unit before improvement or replacement.
 Et2 = The emission rate in pounds per megawatt hour of NO_x of the unit after improvement or replacement.
 h = The number of megawatt hours of operation during the ozone control period.

Allowances will be awarded only after verification of project implementation and certification of energy, emission, or electricity savings, as appropriate. The department will consult the Indiana department of commerce concerning verification and certification.

(4) The department shall review, and allocate NO_x allowances pursuant to, each NO_x allowance allocation request by December 31 of each year as follows:

(A) Upon receipt of the NO_x allowance allocation request, the department shall determine whether and shall make any necessary adjustments to the request to ensure that **for**:

- (i) ~~for~~ electricity generating units, the ozone control period and the number of allowances specified are consistent with the requirements of subdivision (3)(A);
- (ii) ~~for~~ large affected units, the ozone control period and the number of allowances specified are consistent with the requirements of subdivision (3)(B);
- (iii) ~~for~~ energy efficiency and renewable energy projects, the number of allowances specified are consistent with the requirements of subdivision (3)(C); and
- (iv) ~~for~~ units exempt under section 1(b) of this rule, the department will determine the sum of the NO_x emission limitations (in tons of NO_x) on which the unit's exemption under section 1(b) of this rule is based.

(B) The department shall allocate allowances to all qualifying energy efficiency and renewable energy projects ~~prior to before~~ allocating allowances to any new NO_x budget unit. **For energy efficiency and renewable energy projects**, the department shall give first priority to **energy efficiency and renewable energy** projects under section 2(18)(A), 2(18)(C), and 2(18)(D) of this rule, ~~next second priority to projects under~~ section 2(18)(B) of this rule, ~~next third priority to projects under~~ section 2(18)(E) of this rule, and ~~finally fourth priority to projects under~~ section 2(18)(F) of this rule.

(C) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO_x allowances requested, as adjusted under clause (A), to the energy efficiency and renewable energy projects. Any unallocated allowances shall be distributed as follows:

- (i) Fifty percent (50%) of the unallocated allowances shall remain in the set-aside for use in the next year's allocation.
- (ii) Fifty percent (50%) of the unallocated allowances shall be returned to existing large affected units on a pro rata basis.

(D) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), the department shall allocate the allocation set-aside on a pro rata basis, except that allowances requested for projects under section 2(18)(A), 2(18)(C), and 2(18)(D) of this rule shall be allocated first, allocated to projects under section 2(18)(B) of this rule second, allocated to projects under section 2(18)(E) of this rule third, and allocated to projects under section 2(18)(F) of this rule fourth.

(E) If the new unit allocation set-aside for the ozone control period for which NO_x allowances are requested, less the amount under clause (A)(iv), has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO_x allowances requested, as adjusted under clause (A), to the NO_x budget

unit. If the energy efficiency and renewable energy set-aside is oversubscribed in clause (D), the remaining allowances shall be transferred to the energy efficiency and renewable energy set-aside. If the energy efficiency and renewable energy set-aside is undersubscribed in clause (C), the remaining allowances shall be transferred to existing sources on a pro rata basis.

(F) If the new unit allocation set-aside for the ozone control period for which NO_x allowances are requested, less the amount under clause (A)(iv), has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), the department shall allocate the allocation set-aside to the NO_x budget units on a pro rata basis.

(G) After a new budget unit has operated in one (1) ozone control period, it becomes an existing budget unit unless a notification has been received under subsection (i) requesting allocations under this subsection, and the department will allocate allowances for the ozone control period according to subsections (b) and (d). The unit will continue to receive allowances from the new unit set-aside according to subdivision (3) until it is eligible to use allowances allocated under subsection (d).

By December 31 of each year, the department shall take appropriate action under subdivision (4) and notify the NO_x authorized account representative that submitted the request and the U.S. EPA of the number of NO_x allowances allocated for the ozone control period to the NO_x budget unit or energy efficiency or renewable energy projects.

(f) For a new NO_x budget unit that is allocated NO_x allowances under subsection (e) for an ozone control period, the U.S. EPA will deduct NO_x allowances under section 10(k)(1) or 10(k)(8) of this rule to account for the actual emissions of the unit during the ozone control period. Any allowances remaining in the account shall be returned to the new source unit set-aside.

(g) After making the deductions for compliance under section 10(k)(1) or 10(k)(8) of this rule for an ozone control period, the U.S. EPA will notify the department whether any NO_x allowances remain in the allocation set-asides for the ozone control period. Any NO_x allowances remaining in the new unit allocation set-asides shall remain in the new unit allocation set-aside for use in the next year's allocation.

(h) If the number of banked allowances in the new unit set-asides or the energy efficiency set-aside is greater than: ~~the following amounts~~:

- (1) for the EGU new unit set-aside, three thousand four hundred thirteen (3,413) tons for each year in 2004 through 2009 and two thousand thirty-four (2,034) tons each year thereafter;
- (2) for the large affected new unit set-aside, one thousand two hundred thirteen (1,213) tons in 2004 and each year thereafter; **or**
- (3) for energy efficiency and renewable energy set-aside, two thousand two hundred thirty (2,230) tons in 2004 and each year thereafter;

any banked allowances in excess of the values in subsection (e)(1)(A) or (e)(1)(B) shall be allocated to the relevant existing NO_x budget units on a pro rata basis. The allowances from the energy efficiency and renewable energy set-aside shall be allocated to existing large affected units.

(i) A new EGU that commenced operation on or after May 1, 2000, has the option to remain in the new unit set-aside and have allowances allocated in accordance with subsection (e) until such time that it has heat input data for at least two (2) full ozone control periods, but not more than five (5) full ozone control periods for the purpose of determining heat input under subsection (c). The new NO_x budget unit

shall submit a notification to the department by no later than December 1 of the year ~~prior to~~ **before** the allocation schedule in subsection (b) indicating the unit is to receive NO_x allowances in accordance with subsection (e).

*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 10-4-9; filed Aug 17, 2001, 3:45 p.m.: 25 IR 32; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1183; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3558*)

SECTION 6. 326 IAC 10-4-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-13 Individual opt-ins

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 13. (a) A unit may qualify to become a NO_x budget opt-in source under this section if the unit meets the following requirements:

- (1) Is not a NO_x budget unit under section 1 of this rule.
- (2) Has all of its emissions vented to a stack.
- (3) Is currently operating.

A unit that is a NO_x budget unit, is covered by an exemption under section 1(b) of this rule or a retired unit exemption under section 3 of this rule, or is not operating is not eligible to become a NO_x budget opt-in source.

(b) Except otherwise as provided in this rule, a NO_x budget opt-in source shall be treated as a NO_x budget unit for purposes of applying sections 1 through 12 and 14 of this rule.

(c) A unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, or a NO_x budget opt-in source, located at the same source as one (1) or more NO_x budget units, shall have the same NO_x authorized account representative as the NO_x budget units.

(d) In order to apply for an initial NO_x budget opt-in permit, the NO_x authorized account representative of a unit qualified under subsection (a) may submit an application to the department at any time, except as provided under subsection (g), that includes the following:

- (1) A complete NO_x budget permit application under section 7(c) of this rule.
- (2) A monitoring plan submitted in accordance with section 12 of this rule.
- (3) A copy of the complete account certificate of representation submitted to U.S. EPA under section 6(h) of this rule, if no NO_x authorized account representative has been previously designated for the unit.

The NO_x authorized account representative of a NO_x budget opt-in source shall submit a complete NO_x budget permit application under section 7(c) of this rule to renew the NO_x budget opt-in permit in accordance with section 7(b)(1)(C) and 7(b)(2)(C) of this rule and, if applicable, an updated monitoring plan in accordance with section 12 of this rule.

(e) The department shall issue or deny a NO_x budget opt-in permit for a unit for which an initial application for a NO_x budget opt-in

permit under subsection (d) is submitted, in accordance with section 7(a) of this rule and the following:

(1) The department shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x budget opt-in permit under subsection (d). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with section 12 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(2) If the department determines that the unit's monitoring plan is sufficient under subdivision (1) and after completion of monitoring system certification under 40 CFR 75, Subpart H* and section 12 of this rule, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with 40 CFR 75, Subpart H* and section 12 of this rule for one (1) full ozone control period during which:

(A) percent monitor data availability is not less than ninety percent (90%); and ~~during which~~

(B) the unit is in full compliance with any applicable state or federal NO_x emissions or emissions-related requirements.

Solely for purposes of applying the requirements in the ~~prior~~ **prior** sentence, the unit shall be treated as a NO_x budget unit ~~prior to~~ **before** issuance of a NO_x budget opt-in permit covering the unit.

(3) Based on the information monitored and reported under subdivision (2), the unit's baseline heat rate shall be calculated as the unit's total heat input, in million British thermal units, for the ozone control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x mass emissions, in pounds, for the ozone control period divided by the unit's baseline heat rate.

(4) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under subdivision (3), the department shall serve a draft NO_x budget opt-in permit on the NO_x authorized account representative of the unit.

(5) Within twenty (20) days after the issuance of the draft NO_x budget opt-in permit, the NO_x authorized account representative of the unit must submit to the department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_x budget opt-in permit under subsection (d). The department shall treat the failure to make a timely submission as a withdrawal of the NO_x budget opt-in permit application.

(6) If the NO_x authorized account representative confirms the intention to opt in the unit under subdivision (5), the department shall issue the draft NO_x budget opt-in permit in accordance with section 7(a) of this rule.

(7) Notwithstanding subdivisions (1) through (6), if at any time before issuance of a draft NO_x budget opt-in permit for the unit, the department determines that the unit does not qualify as a NO_x budget opt-in source under subsection (a), the department shall issue a draft denial of a NO_x budget opt-in permit for the unit in accordance with section 7(a) of this rule.

(8) A NO_x authorized account representative of a unit may withdraw its application for a NO_x budget opt-in permit under subsection (d) at any time ~~prior to~~ **before** the issuance of the final NO_x budget opt-in permit. Once the application for a NO_x budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x budget permit under subsection (d).

(9) The effective date of the initial NO_x budget opt-in permit shall be May 1 of the first ozone control period starting after the issuance of

the initial NO_x budget opt-in permit by the department. The unit shall be a NO_x budget opt-in source and a NO_x budget unit as of the effective date of the initial NO_x budget opt-in permit.

(f) The following shall apply to the content of a NO_x budget opt-in permit:

(1) Each NO_x budget opt-in permit, including any draft or proposed NO_x budget opt-in permit, if applicable, shall contain all elements required for a complete NO_x budget opt-in permit application under section 7(c) of this rule.

(2) Each NO_x budget opt-in permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under this section and sections 10 and 11 of this rule, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x budget opt-in source covered by the NO_x budget opt-in permit or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located.

(g) The following requirements must be satisfied in order to withdraw an opt-in unit from the NO_x budget trading program:

(1) The NO_x authorized account representative of a NO_x budget opt-in source shall submit to the department a request to withdraw effective as of a specified date **prior to before** May 1 or after September 30. The submission shall be made no later than ninety (90) days **prior to before** the requested effective date of withdrawal.

(2) Before a NO_x budget opt-in source covered by a request under subdivision (1) may withdraw from the NO_x budget trading program and the NO_x budget opt-in permit may be terminated under subdivision (6), the following conditions must be met:

(A) For the ozone control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the department an annual compliance certification report in accordance with section 8 of this rule.

(B) If the NO_x budget opt-in source has excess emissions for the ozone control period immediately before the withdrawal is to be effective, the U.S. EPA will deduct or have deducted from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, the full amount required under section 10(k)(5) through 10(k)(7) of this rule for the ozone control period.

(C) After the requirements for withdrawal under this subdivision and subdivision (1) are met, the U.S. EPA will deduct from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as any NO_x allowances allocated to that source under subsection (i) for any ozone control period for which the withdrawal is to be effective. The U.S. EPA will close the NO_x budget opt-in source's compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(3) A NO_x budget opt-in source that withdraws from the NO_x budget trading program shall comply with all requirements under the NO_x budget trading program concerning all years for which the NO_x budget opt-in source was a NO_x budget opt-in source, even if the requirements arise or must be complied with after the withdrawal takes effect.

(4) After the requirements for withdrawal under subdivisions (1) and (2) are met, including deduction of the full amount of NO_x allowances required, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source of the acceptance of the withdrawal of the NO_x budget opt-in source as of a specified effective date that is after the requirements have been met and that is **prior to before** May 1 or after September 30.

(5) If the requirements for withdrawal under subdivisions (1) and (2) are not met, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source that the NO_x budget opt-in source's request to withdraw is denied. If the NO_x budget opt-in source's request to withdraw is denied, the NO_x budget opt-in source shall remain subject to the requirements for a NO_x budget opt-in source.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the NO_x budget permit covering the NO_x budget opt-in source to terminate the NO_x budget opt-in permit as of the effective date specified under subdivision (1). A NO_x budget opt-in source shall continue to be a NO_x budget opt-in source until the effective date of the termination.

(7) If the department denies the NO_x budget opt-in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with subdivisions (1) and (2).

Once a NO_x budget opt-in source withdraws from the NO_x budget trading program and its NO_x budget opt-in permit is terminated under this section, the NO_x authorized account representative may not submit another application for a NO_x budget opt-in permit under subsection (d) for the unit **prior to before** the date that is four (4) years after the date on which the terminated NO_x budget opt-in permit became effective.

(h) When a NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the NO_x authorized account representative shall notify the department and the U.S. EPA in writing of the change in the NO_x budget opt-in source's regulatory status within thirty (30) days of the change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning a NO_x budget opt-in source:

(1) When the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the department shall revise the NO_x budget opt-in source's NO_x budget opt-in permit to meet the requirements of a NO_x budget permit under section 7(d) and 7(e) of this rule as of an effective date that is the date on which the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account for the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as follows:

(A) Any NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for any ozone control period after the last ozone control period during which the unit's NO_x budget opt-in permit was effective.

(B) If the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under

subdivision (1), divided by the total number of days in the ozone control period.

(3) The NO_x authorized account representative shall ensure that the compliance account of the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under subdivision (2). If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(4) For every ozone control period during which the NO_x budget permit revised under subdivision (1) is effective, the following shall apply:

(A) The NO_x budget unit under subdivision (1) shall be:

(i) treated, solely for the purposes of NO_x allowance allocations under section 9(c) through 9(e) of this rule, as a unit that commenced operation on the effective date of the NO_x budget permit revision under subdivision (1); and ~~shall be~~

(ii) allocated NO_x allowances under section 9(c) through 9(e) of this rule.

(B) Notwithstanding clause (A), if the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the following number of NO_x allowances shall be allocated to the NO_x budget unit. The number of NO_x allowances otherwise allocated to the NO_x budget unit under section 9(c) through 9(e) of this rule for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(5) When the NO_x authorized account representative of a NO_x budget opt-in source does not renew its NO_x budget opt-in permit under subsection (d), the U.S. EPA will deduct from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, includes the NO_x allowances necessary for completion of the deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(6) After the deduction under subdivision (5) is completed, the U.S. EPA will close the NO_x budget opt-in source's compliance account. If any NO_x allowances remain in the compliance account after completion of the deduction and any deduction under section 10(j) and 10(k) of this rule, the U.S. EPA will:

(A) close the NO_x budget opt-in source's compliance account; and ~~will~~

(B) establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x budget opt-in source.

The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative

for the general account.

(i) The department shall allocate NO_x allowances to NO_x budget opt-in sources as follows:

(1) By December 31 immediately before the first ozone control period for which the NO_x budget opt-in permit is effective, the department shall allocate NO_x allowances to the NO_x budget opt-in source and submit to the U.S. EPA the allocation for the ozone control period in accordance with subdivision (3).

(2) By no later than December 31, after the first ozone control period for which the NO_x budget opt-in permit is in effect, and December 31 of each year thereafter, the department shall allocate NO_x allowances to the NO_x budget opt-in source and submit to the U.S. EPA allocations for the next ozone control period in accordance with subdivision (3).

(3) For each ozone control period for which the NO_x budget opt-in source has an approved NO_x budget opt-in permit, the NO_x budget opt-in source shall be allocated NO_x allowances according to the following procedures:

(A) The heat input, in million British thermal units, used for calculating NO_x allowance allocations shall be the lesser of: ~~the following:~~ **the NO_x budget opt-in source's:**

(i) ~~The NO_x budget opt-in source's~~ baseline heat input determined pursuant to subsection (e)(3); or

(ii) ~~The NO_x budget opt-in source's~~ heat input, as determined in accordance with section 12 of this rule, for the ozone control period in the year ~~prior to~~ before the year of the ozone control period for which the NO_x allocations are being calculated.

(B) The department shall allocate NO_x allowances to the NO_x budget opt-in source in an amount equaling the heat input, in million British thermal units, determined under clause (A) multiplied by the lesser of: ~~the following:~~

(i) the NO_x budget opt-in source's baseline NO_x emissions rate, in pounds per million British thermal units, determined ~~pursuant to~~ under subsection (e)(3); or

(ii) the most stringent state or federal NO_x emissions limitation applicable to the NO_x budget opt-in source during the ozone control period;

then the product divided by two thousand (2,000) pounds per ton and rounded to the nearest ton.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-13; filed Aug 17, 2001, 3:45 p.m.: 25 IR 48; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1184; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3568*)

SECTION 7. 326 IAC 10-4-14 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-14 NO_x allowance banking

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 14. (a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account as follows:

(1) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account shall remain in the account

unless and until the NO_x allowance is deducted or transferred under:

- (A) section 8(d), 8(e), 10(j), 10(k), 11, or 13 of this rule; or
- (B) subsection (b).

(2) The U.S. EPA will designate, as a banked NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the U.S. EPA has made all deductions for a given ozone control period from the compliance account or overdraft account ~~pursuant to~~ **under** section 10(j) and 10(k) of this rule, 40 CFR 97*, a state NO_x budget trading program established pursuant to 40 CFR 51.121* and approved and administered by the U.S. EPA, or a federal implementation plan and that was allocated for that ozone control period or a ozone control period in a prior year.

(b) Each year starting in 2005, after the U.S. EPA has completed the designation of banked NO_x allowances under subsection (a)(2) and before May 1 of the year, the U.S. EPA will determine the extent that banked NO_x allowances may be used for compliance in the ozone control period for the current year as follows:

- (1) The U.S. EPA will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.
- (2) If the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked NO_x allowance may be deducted for compliance in accordance with section 10(k) of this rule.
- (3) If the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked allowance may be deducted for compliance in accordance with section 10(k) of this rule, except as follows:

(A) The U.S. EPA will determine the following ratio:

- (i) One-tenth (0.10) multiplied by the sum of the trading program budget for the ozone control period.
- (ii) Divided by the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts.

(B) The U.S. EPA will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined under clause (A). The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with section 10(k) of this rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with section 10(k) of this rule, except that, if these NO_x allowances are used to make a deduction, two (2) NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under section 10(k) of this rule.

*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, ~~Tenth Floor~~, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-14; filed Aug 17, 2001, 3:45 p.m.; 25 IR 52; errata filed Nov 29, 2001, 12:20 p.m.; 25 IR 1184; filed Jul 7, 2003, 4:00 p.m.; 26 IR 3572*)

SECTION 8. 326 IAC 10-4-15 IS AMENDED TO READ AS

FOLLOWS:

326 IAC 10-4-15 Compliance supplement pool

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 15. (a) The department may allow sources required to implement NO_x emission control measures by May 31, 2004, and subject to this rule, to demonstrate compliance in the 2004 and 2005 ozone control periods using credit issued from a compliance supplement pool in accordance with this section. A source may not use credit from the compliance supplement pool to demonstrate compliance after the 2005 ozone control period.

(b) The department may distribute NO_x allocations from the compliance supplement pool to NO_x budget units that are required to implement control measures using one (1) or both of the following mechanisms:

(1) The department may issue credits to NO_x budget units that implement emissions reductions beyond all applicable requirements from May 1 through and including September 30 in any year in 2001 through 2003 according to the following provisions:

(A) The department shall complete the issuance process no later than March 31, the year after the control measures were implemented.

(B) The emissions reduction may not be required by Indiana's state implementation plan (SIP), state law or rule, or be otherwise required by the Clean Air Act (CAA).

(C) The emissions reduction must be verified by the source as actually having occurred from May 1 through and including September 30 in any year in 2001 through 2003.

(D) Each NO_x budget unit for which the owner or operator requests any early reduction credits under this section shall monitor NO_x emissions in accordance with 40 CFR 75, Subpart H* starting in the ozone control period ~~prior to~~ **before** the ozone control period for which the early reduction credits are requested and for each ozone control period for which the early reduction credits are requested. The unit's percent monitor data availability shall be not less than ninety percent (90%) during the ozone control period ~~prior to~~ **before** the ozone control period for which the early reduction credits are requested, and the unit must be in compliance with any applicable state or federal NO_x emissions or emissions-related requirements during the ozone control period for which the early reduction credits are requested.

(E) The emissions reduction must be quantified according to procedures set forth in 40 CFR 75, Subpart H*.

(F) The NO_x authorized account representative of a NO_x budget unit that meets the requirements of clauses (B) through (D) may submit to the department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the ozone control period for any year in 2001 through 2003.

The request shall include the following:

(i) In the early reduction credit request, the NO_x authorized account may request early reduction credits for the ozone control period in an amount equal to the unit's heat input for the ozone control period in which the early reductions occurred multiplied by the difference between **the unit's**:

(AA) ~~the unit's~~ actual average NO_x emission rate in the ozone control period ~~prior to~~ **before** the first ozone control period for which the early reduction credits are requested; and

(BB) ~~the unit's~~ NO_x emission rate for the ozone control period in which the early reductions occurred;

divided by two thousand (2,000) pounds per ton and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the department, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or a later date approved by the department.

(G) The department shall allocate NO_x allowances from the compliance supplement pool to NO_x budget units meeting the requirements of this subdivision in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the department shall accept the request only if the requirements of clauses (B) through (D) and (F)(ii) are met and, if the request is accepted, shall make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of clauses (B) through (D).

(ii) If the compliance supplement pool has an amount of NO_x allowances equal to or greater than the number of early reduction credits in all accepted early reduction credit requests for any year in 2001 through 2003, as adjusted under item (i), the department shall allocate to each NO_x budget unit covered by the accepted requests one (1) allowance for each early reduction credit requested, as adjusted under item (i).

(iii) If the compliance supplement pool has an amount of NO_x allowances less than the number of early reduction credits in all accepted early reduction credit requests for any year in 2001 through 2003, as adjusted under item (i), the department shall allocate NO_x allowances to each NO_x budget unit covered by the accepted requests according to the formula:

$$\begin{aligned} & \text{A NO}_x \text{ budget unit's allocated early reduction credits} = \\ & \frac{((\text{NO}_x \text{ budget unit's adjusted early reduction credits}) \div (\text{total adjusted early reduction credits requested by all NO}_x \text{ budget units})) \times (\text{available NO}_x \text{ allowances from the compliance supplement pool})}{1} \end{aligned}$$

where:

(AA) A NO_x budget unit's adjusted early reduction credits is the number of early reduction credits for the unit for any year in 2001 through 2003 in accepted early reduction credit requests, as adjusted under item (i).

(BB) Total adjusted early reduction credits requested by all NO_x budget units is the number of early reduction credits for all NO_x budget units for any year in 2001 through 2003 in accepted early reduction credit requests, as adjusted under item (i).

(CC) Available NO_x allowances from the compliance supplement pool is the number of NO_x allowances in the compliance supplement pool and available for early reduction credits for 2001 through 2003.

(H) By March 31 of the year following the request, the department shall submit to the U.S. EPA the allocations of NO_x allowances determined under clause (G). The U.S. EPA will record the allocations to the extent that they are consistent with the requirements of clauses (B) through (G).

(I) NO_x allowances recorded under clause (H) may be deducted for compliance under section 10(k) of this rule for the ozone control periods in 2004 through 2005. Notwithstanding section 14(a) of this rule, the U.S. EPA will deduct as retired any NO_x allowance that is recorded under clause (G) and is not deducted for compliance in accordance with section 10(k) of this rule for the ozone control period in 2004 or 2005.

(J) NO_x allowances recorded under clause (G) are treated as

banked allowances in 2005 for the purposes of section 14(a) and 14(b) of this rule.

(K) (J) Sources that receive credit according to the requirements of this section may trade the credit to other sources or persons according to the provisions in this rule.

(2) The department may issue to NO_x budget units that demonstrate a need for an extension of the May 31, 2004, compliance deadline according to the following provisions:

(A) The department shall initiate the issuance process by the later date of:

(i) September 30, 2002; or

(ii) after the department issues credit according to the procedures in subdivision (1).

(B) The department shall complete the issuance process by no later than May 31, 2004.

(C) The department shall issue credit to a source only if the source demonstrates the following:

(i) For electricity generating units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with this rule.

(ii) For large affected units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in item (i).

(iii) For a unit subject to this rule and subdivision (1) that allows for early reduction credits, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.

(iv) For a unit subject to an approved emissions trading program under this rule, it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons subject to the emissions trading program.

(D) The department shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a NO_x budget unit under clause (C).

(c) The total number of NO_x allowances available from the compliance supplement pool shall not exceed nineteen thousand nine hundred fifteen (19,915) tons of NO_x. No more than fifty percent (50%) of the compliance supplement pool shall be allocated in 2003 for early reductions implemented in 2001 and 2002. The remainder of the compliance supplement pool shall be allocated in 2004 for early reductions implemented in 2003 and any demonstrations of need. Any NO_x allowances that remain in the compliance supplement pool after the 2005 ozone control period shall be retired.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-15; filed Aug 17, 2001, 3:45 p.m.: 25 IR 53; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1184; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3572*)

SECTION 9. 326 IAC 10-5 IS ADDED TO READ AS FOLLOWS:

Rule 5. Nitrogen Oxide Reduction Program for Internal Combustion Engines (ICE)

326 IAC 10-5-1 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. The requirements of this rule apply to the owner or operator of any large NO_x SIP Call engine. (*Air Pollution Control Board; 326 IAC 10-5-1*)

326 IAC 10-5-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

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

(1) "Affected engine" means any stationary internal combustion engine that is:

- (A) a large NO_x SIP Call engine; or
- (B) subject to NO_x control under a compliance plan under section 3 of this rule.

(2) "Engine seasonal NO_x 2007 tonnage reduction" means the year 2007 seasonal NO_x emissions reductions value in tons for a large NO_x SIP Call engine. This is calculated as the difference between the 2007 ozone season base NO_x emissions and the 2007 ozone season budget NO_x emissions contained in the NO_x SIP call engine inventory.

(3) "Facility seasonal NO_x 2007 tonnage reduction" means the total of the engine seasonal NO_x 2007 tonnage reductions attributable to all of an owner or operator's large NO_x SIP Call engines.

(4) "Large NO_x SIP Call engine" means a stationary internal combustion engine identified and designated as large in the NO_x SIP Call engine inventory as emitting more than one (1) ton of NO_x per average ozone season day in 1995.

(5) "NO_x SIP Call engine inventory" means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call rule, including technical amendments announced in the March 2, 2000, Federal Register notice (65 FR 11222)*, and the adjustment of the 2007 budget NO_x control efficiency to eighty-two percent (82%) for large gas-fired engines announced in the April 21, 2004, Federal Register notice (69 FR 21604)* for the phase II NO_x SIP Call rule.

(6) "Ozone season" means the time period between May 1 and September 30.

(7) "Past NO_x emission rate" means the following:

(A) For large NO_x SIP Call engines, the past NO_x emission rate is the 1995 uncontrolled emission rate in grams per brake horsepower hour (g/bhp-hr) that was used to determine NO_x emissions from this engine for the NO_x SIP Call emissions inventory.

(B) For an affected engine other than a large engine, the past NO_x emission rate in grams per brake horsepower per hour (g/bhp-hr) shall be determined based on performance testing consistent with the requirements of 40 CFR 60, Appendix A*. Where such test data are not available, the past NO_x emission rate may be determined on a case-by-case basis using, for example, appropriate emission factors or data from the NO_x SIP Call engine inventory.

(8) "Potential operating hours" means the projected actual number of hours of operation per ozone season for an affected

engine.

(9) "Projected NO_x emission rate" means the projected NO_x emission rate in g/bhp-hr after installation of controls on an affected engine.

(10) "Stationary internal combustion engine" means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one (1) location to another and remains at a single site at:

- (A) a building;
- (B) a structure;
- (C) a facility; or
- (D) an installation;

for more than twelve (12) consecutive months. Any engine that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-5-2*)

326 IAC 10-5-3 Compliance plan

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) After May 1, 2007, an owner or operator of a large NO_x SIP Call engine shall not operate the engine in the period May 1 through September 30 of 2007, and any subsequent year unless the owner or operator complies with the requirements of a compliance plan that meets the following provisions:

(1) The compliance plan must:

- (A) be approved by the department; and
- (B) demonstrate enforceable emission reductions from one (1) or more stationary internal combustion engines equal to or higher than the facility seasonal NO_x 2007 tonnage reduction.

(2) The compliance plan may cover some or all engines at:

- (A) an individual facility;
- (B) several facilities; or
- (C) all facilities in the state that are in control of the same owner or operator.

(3) The compliance plan must be submitted to the department by May 1, 2006.

(4) The compliance plan may include credit for decreases in NO_x emissions from large NO_x SIP Call engines due to NO_x control equipment. Credit may also be included for decreases in NO_x emissions from other engines due to NO_x control equipment not reflected in the 2007 ozone season base NO_x emissions in the NO_x SIP Call engine inventory.

(5) The compliance plan must include the following items:

- (A) A list of affected engines subject to the plan, including the engine's:
 - (i) manufacturer;
 - (ii) model;
 - (iii) facility location address; and
 - (iv) facility identification number.
- (B) The projected ozone season hours of operation for each engine and supporting documentation.

(C) A description of the NO_x emissions control installed, or to be installed, on each engine and documentation to support projected emission rates.

(D) The past and projected NO_x emission rates for each affected engine in grams per brake horsepower per hour (g/bhp-hr).

(E) A numerical demonstration that the emission reductions obtained from all engines included under the plan will be equivalent to or greater than the owner or operator's facility seasonal NO_x 2007 tonnage reduction, based on the difference between the:

- (i) past emission rate in operating hours; and
- (ii) projected emission rate in operating hours;

multiplied by the projected operating hours for each affected engine and taking into account any credit under subdivision (4).

(F) Provisions for monitoring including the frequency of the monitoring, as specified in section 4 of this rule.

(G) Reporting and record keeping as specified in section 5 of this rule.

(b) The projected NO_x emission rate in grams per brake horsepower per hour (g/bhp-hr) for each affected engine must be included in a federally enforceable permit, and the permit shall contain the following:

- (1) The emission rate.
- (2) Monitoring requirements.
- (3) Record keeping.
- (4) Reporting.

(Air Pollution Control Board; 326 IAC 10-5-3)

326 IAC 10-5-4 Monitoring and testing requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 4. Each affected engine subject to this rule shall comply with the following requirements:

- (1) Complete an initial performance test consistent with the requirements of 40 CFR 60, Appendix A*, following installation of emission controls required to achieve the emission rate limit specified in section 3(b) of this rule.
- (2) Perform periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of a source's compliance with the emission rate limit specified in section 3(b) of this rule. Such periodic monitoring may include any of the following:

(A) Performance tests consistent with the requirements of:

- (i) 40 CFR 60, Appendix A*; or
- (ii) portable monitors using ASTM D6522-00*.

(B) A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine's emissions are consistent with the requirements of section 3 of this rule.

(C) A predictive emissions measurement system that relies on automated data collection from instruments.

(D) A continuous emission monitoring system (CEMS) that complies with 40 CFR 60* or 40 CFR 75* as required under 326 IAC 3-5.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Manage-

ment, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-5-4)

326 IAC 10-5-5 Record keeping and reporting

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) Maintain all records necessary to demonstrate compliance with the requirements of this rule for a period of two (2) calendar years at the plant at which the subject engine is located. The records shall be made available to the department and U.S. EPA upon request. For each engine subject to the requirements of this rule, the owner or operator shall maintain the following records:

- (1) Identification and location of each engine subject to the requirements of this rule.
- (2) Calendar date of record.
- (3) The number of hours the unit is operated during each ozone season compared to the projected operating hours.
- (4) Type and quantity of fuel used.
- (5) The results of all compliance tests.
- (6) Monitoring data.
- (7) Preventative maintenance.
- (8) Corrective actions.

(b) Any owner or operator subject to the requirements of this rule shall submit results of all compliance tests to the department.

(c) The end of the ozone season report shall include the following:

- (1) Engine identification.
- (2) Engine's operating hours.
- (3) The type and quantity of fuel used.
- (4) Ozone season emissions.
- (5) Average NO_x emission rate.

(Air Pollution Control Board; 326 IAC 10-5-5)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on March 2, 2005, 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 new rule 326 IAC 10-5 and amendments to 326 IAC 10-3 and 326 IAC 10-4.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule and amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

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

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing

impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

#04-278(APCB)

DEVELOPMENT OF AMENDMENTS TO 326 IAC 6-1-10.1 CONCERNING MODIFICATIONS TO PARTICULATE MATTER EMISSION LIMITATIONS AT ASF-KEYSTONE, INC., HAMMOND, INDIANA

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 6.8-2-4 (formerly 326 IAC 6-1-10.1) concerning particulate matter emission limitations (PM₁₀) for coil manufacturing processes at ASF-Keystone, Inc., located in Hammond, Indiana. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: November 1, 2004, Indiana Register (28 IR 678).

CITATIONS AFFECTED: 326 IAC 6-1-10.1; 326 IAC 6.8-2-4.

AUTHORITY: IC 13-14-8; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

ASF-Keystone, Inc. (ASF) has requested that IDEM make revisions to particulate matter (PM₁₀) emission limitations in 326 IAC 6.8-2-4 (formerly 326 IAC 6-1-10.1) for their coil springs manufacturing facility in Hammond, Indiana. IDEM has recently proposed to repeal 326 IAC 6-1 and replace it with two (2) new articles, 326 IAC 6.5 and 326 IAC 6.8 (28 IR 326). All sources located in Lake County will be placed in the new article 6.8 and this notice reflects these proposed changes. The source has requested that IDEM increase the particulate matter (PM₁₀) emission limitations in 326 IAC 6.8-2-4 (formerly 326 IAC 6-1-10.1) for the small coil manufacturing line and decrease the PM₁₀ emission limitations for the large and medium coil manufacturing lines, resulting in a net reduction in allowable emissions. ASF is proposing a decrease of one and seventy-five hundredths pounds of PM₁₀ per hour (1.75 lbs PM₁₀/hr) and one and five-hundredths pounds of PM₁₀ per hour (1.05 lbs PM₁₀/hr) for the large and medium coil lines, respectively. ASF is proposing an increase of one and three-hundredths pounds of PM₁₀ per hour (1.03 lbs PM₁₀/hr) for the small coil line. The proposed limits more closely reflect actual emissions, based on recent stack tests, while maintaining a reasonable degree of certainty that ASF will be able to ensure continuous compliance with the proposed limits. The proposed limits also provide a reduction in

total allowable emissions from these processes. No modeling is needed because the emissions from these sources are modeled as volume sources, and the changes would have no negative impact on the model since the total emissions would be decreased. ASF will need to request a permit modification once the revised limits are effective and approved by U.S. EPA.

ASF has also requested that the pound per ton (lb/ton) limits be removed from the rule for each coil line. The request was made because the pound per ton limit is not necessary since the coil lines' emissions are not necessarily related solely to the tonnage of coil produced. The emissions are more dependent on the number of springs being quenched and their corresponding surface areas than their tonnage. Also, the pound per hour (lb/hr) limits are derived using the pound per ton (lb/ton) limits multiplied by their respective maximum production rates; therefore, the pound per hour (lb/hr) limits are as stringent as the pound per ton (lb/ton) limits. This will satisfy U.S. EPA's stringency criteria for removal of rules or rule sections from the Indiana State Implementation Plan (SIP).

ASF is also requesting that IDEM remove the miscellaneous coil manufacturing process from the rule as this process no longer exists at this facility.

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. The decrease in allowable emissions from the medium and large coil manufacturing lines does not impose a new requirement, but provides a mechanism to increase the allowable emissions from the small coil line.

Potential Fiscal Impact

There should be no fiscal impact since stack test show that the source is already meeting the proposed emission limits for all three coil manufacturing lines.

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 Susan Bem, Rules Section, Office of Air Quality at (317) 233-5697 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from November 1, 2004, through December 2, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#04-278(APCB)ASF-Keystone PM10 SIP

Susan Bem

c/o Administrative Assistant

Rules Section

Air Programs Branch

Office of Air Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the Tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by February 2, 2005.

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).

DRAFT RULE

SECTION 1. 326 IAC 6.8-2-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 6.8-2-4 ASF-Keystone, Inc.-Hammond

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 4. ~~American Steel Foundry~~ **ASF-Keystone, Inc.-Hammond** in Lake County shall meet the following emission limits:

Source	Emission Limit (Units)	Emission Limit (lbs/hr)
Stack serving coil spring grinder numbers 3-0386 and 3-0389	1.083 lbs/ton	0.045
Stack serving coil spring grinder number 3-0244	0.021 lbs/ton	0.040
Tub grinder number 3-0388	0.015 lbs/ton	2.00
Coil spring grinder number 3-0247	0.019 lbs/ton	0.03
Coil spring grinder number 3-0249	3.792 lbs/ton	1.82
Coil spring grinders numbers 3-0385, 3-295, and 3-0233	0.019 lbs/ton	0.05
Shot blast peener number 3-1804	0.011 lbs/ton	0.06
Shot blast peener number 3-1811	0.018 lbs/ton	0.06
Shot blast peener number 3-1821	0.016 lbs/ton	0.06
Shot blast peener number 3-1823	0.016 lbs/ton	0.06
Small coil manufacturing (ESP number 3-3024)	0.014 lbs/ton	0.02 1.05
Medium coil manufacturing (ESP number 3-3027)	0.700 lbs/ton	2.10 1.05
Large coil manufacturing (ESP number 3-3028)	0.700 lbs/ton	3.50 1.75
Miscellaneous coil manufacturing (ESP number 3-3026)	0.700 lbs/ton	1.05

(Air Pollution Control Board; 326 IAC 6.8-2-4)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on April 6, 2005, 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 amendments to 326 IAC 6.8-2-4 (formerly 326 IAC 6-1-10.1).

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from 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 or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

#04-106(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING TRANSIENT NONCOMMUNITY PUBLIC WATER SYSTEMS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 327 IAC 8-1, 327 IAC 8-3, 327 IAC 8-3.1, 327 IAC 8-3.2, 327 IAC 8-3.3, 327 IAC 8-3.4, 327 IAC 8-3.5, 327 IAC 8-4, and 327 IAC 8-6 concerning simplification of the construction permitting requirements for small systems, which are designed to reduce the regulatory burden on those same small systems. The public water systems primarily affected by the proposed amendments are transient noncommunity public water systems that use wells and serve two hundred fifty (250) people or less. The amendments also update standards that are incorporated by reference in these rules. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: May 1, 2004, Indiana Register (27 IR 2591).

CITATIONS AFFECTED: 327 IAC 8-1; 327 IAC 8-3; 327 IAC 8-3.1; 327 IAC 8-3.2; 327 IAC 8-3.3; 327 IAC 8-3.4; 327 IAC 8-3.5; 327 IAC 8-4; 327 IAC 8-6.

AUTHORITY: IC 13-14-8; IC 13-18-3; IC 13-18-16.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The main purpose of the amendments is to simplify the construction permitting requirements for small systems, which will also reduce the regulatory burden on those same small systems. The public water systems primarily affected by the proposed amendment are transient noncommunity public water systems that use wells and serve two hundred fifty (250) people or less. Approximately two thousand five hundred (2,500) systems fall into the category. Transient noncommunity public water systems are facilities with their own water supply, usually a well, and regularly serve twenty-five (25) or more people. Examples of transient noncommunity public water systems include churches, restaurants, gas stations, campgrounds, and parks. The amendments provide regulatory relief by eliminating the requirements for a professional engineer (PE) to prepare plans and specifications and to sign and stamp permit applications for these systems as is currently required. The amendments will allow licensed professional geologists and licensed well drillers to also prepare and submit plans. The amendments will change the well siting requirements for transient noncommunity public water systems. The amendments will eliminate the need for affected systems to obtain a permit to install such items as a water softener. The amendment will also provide for the development of alternative construction permitting approaches for transient noncommunity public water systems. Standards that have been incorporated by reference into the permitting rules are also being updated.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

This rule is authorized under IC 13-18-16, and the amendments being made are easing the requirements on small transient public water systems using wells.

Potential Fiscal Impact

Since these amendments are designed to simplify the construction permitting process, it is believed that these amendments will result in a neutral and possibly negative fiscal impact while providing some regulatory relief and still ensuring a safe and adequate supply of drinking water.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a cross section of stakeholders. Stakeholder meetings were held on August 19, 2004, in LaGrange; August 20, 2004, in Plymouth; and August 26, 2004, in Indianapolis. The stakeholder comments from these meetings were used to create the draft amendments. Information was sent to the stakeholders in November 2004 for review and comment. If you wish to provide comments on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Mary Hollingsworth, Permits and Capacity Development Section, Office of Water Quality at (317) 308-3331 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from May 1, 2004, through May 30, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#04-106(WPCB) Amendment to Construction Rule
Lawrence Wu
Rules Section Chief
Office of Water 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 12th floor reception desk, Office of Water Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-8406, Monday through Friday, between 8:15 and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 30, 2005.

Additional information regarding this action may be obtained from Kiran Verma, Rules Section, Office of Water Quality, (317) 234-0986 or (800) 451-6027 (in Indiana).

DRAFT RULE

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

327 IAC 8-1-1 Community water system; fluoridation; phosphate additives

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

Affected: IC 13-13-5-1; IC 13-18-2

Sec. 1. Each community water system that adds a fluoride or phosphate compound shall comply with the following:

(1) Fluoride compounds may be added to such water supplies after receiving a construction permit from the commissioner providing the total content of fluoride ion (F⁻) after such addition does not exceed two (2.0) milligrams per liter (mg/l) unless the public water system is a participant in an Indiana state department of health approved school fluoride adjustment program for which the concentration of fluoride in a school water supply shall not exceed five and one-half (5.5) mg/l.

(2) Phosphate additives may be added to the water for treatment of iron, manganese, scale, and corrosion problems after receiving a construction permit from the commissioner. Such direct additives shall be in conformance with section 2 of this rule. Total phosphate concentration shall not exceed ten (10) mg/l measured as PO₄. Product may be provided in liquid or dry form. Containers in which the agents are packaged shall be labeled indicating product information and general instructions for use. At a minimum, the label must display the name and application of product, percentage phosphate concentration as PO₄, and certification of American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 60, NSF Listings, Drinking Water Additives Treatment Chemicals-Health Effects. In addition, if it is provided in liquid form, the label shall specify pH and specific gravity. The containers must also be marked identifying manufacturing batch number. All liquid products must be treated for bacteria control at the time of manufacture with a potably approved bacteria control agent.

(Water Pollution Control Board; 327 IAC 8-1-1; filed Sep 24, 1987,

3:00 p.m.: 11 IR 705; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1003; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2491; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 2. 327 IAC 8-1-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-1-2 Drinking water direct additives and indirect additives; certification requirements

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. (a) All public water systems shall comply with this section before the conclusion of ninety (90) days from the effective date of this rule.

(b) All direct additives in public water systems shall be certified for conformance to American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 60, NSF Listings, Drinking Water ~~Additives Treatment Chemicals-Health Effects~~. All public water systems must compile and maintain on file for inspection by the commissioner a list of all direct additives used that come into contact with the drinking water. This list must contain the name, the description, the manufacturer of the product, and whether the direct additive is certified under this section. The list must be maintained as long as the direct additives are used by the public water ~~supply~~ system.

(c) The following new or modified indirect additives in public water systems shall be certified for conformance to American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 61, ~~Classified or Recognized~~ Drinking Water System ~~Components, Component Materials and Treatment Additives Directory, Components-Health Effects~~, except Section 9, Mechanical Plumbing Product:

- (1) All indirect additives found in finished water storage facilities, including lubricants, tank coatings, paints, and epoxies.
- (2) All indirect additives between all entry points ~~of to~~ the distribution system, and ~~all customer service connection meters: the premises of the consumer.~~
- (3) All filter and membrane media.
- (4) All indirect additives ~~which that~~ are classified in a category of indirect additives for which American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 61 is available.

(d) All public water systems must demonstrate certification of direct additives and indirect additives required by subsections (b) and (c) when inspected by the commissioner.

(e) Certification that a direct additive or an indirect additive meets the standards adopted in or ~~pursuant to~~ under this rule shall be recognized as being listed with such certification in one (1) of the following publications:

- (1) "NSF Listings, Drinking Water ~~Additives Treatment Chemicals-Health Effects~~".
- (2) ~~"Classified or Recognized"~~ "Drinking Water System ~~Components, Component Materials, and Treatment Additives Directory~~". **Components-Health Effects**".

(f) The commissioner may approve the use of a direct or indirect additive in a public water system only after the applicant has demon-

strated that the direct or indirect additive is in compliance with **one (1) or more of** the following conditions:

- (1) The direct or indirect additive has been approved and is listed by one (1) of the publications specified by subsection (e).
- (2) The direct or indirect additive has been approved by an organization having a third party certification program for direct or indirect additives that has been approved by the American National Standards Institute.

(g) The commissioner shall maintain a copy of the following:

- (1) "NSF Listings, Drinking Water ~~Additives Treatment Chemicals-Health Effects~~".
- (2) ~~"Classified or Recognized"~~ "Drinking Water System ~~Components, Component Materials, and Treatment Additives Directory~~". **Components-Health Effects**".

(h) A public water system shall not willfully introduce, permit, or suffer the introduction of a direct additive or indirect additive into the drinking water that does not meet the requirements of this rule. (*Water Pollution Control Board; 327 IAC 8-1-2; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2492; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 3. 327 IAC 8-1-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-1-3 Definitions

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 3. In addition to the definitions ~~contained~~ in IC 13-11-2, the following definitions apply throughout this rule:

(1) "Direct additives" means additives that are used in public water systems for the treatment of raw water. Direct additives are also used to protect drinking water during storage and distribution. Examples of direct additives include the following:

- (A) Agents used for coagulation and flocculation.
- (B) Corrosion and scale control.
- (C) Softening.
- (D) Sequestering.
- (E) Precipitation.
- (F) pH adjustment.
- (G) Disinfection and oxidation.
- (H) Miscellaneous treatment applications.
- (I) Miscellaneous water supply products.

(2) "Entry point ~~of to~~ the distribution system" means one (1) of the following points:

- (A) In public water systems ~~which that~~ utilize water treatment facilities, the point at which the drinking water has left the treatment facilities and has entered the **water** distribution system.
- (B) In public water systems ~~which that~~ do not utilize water treatment facilities, the point at which the drinking water has left the supply facilities and has entered the **water** distribution system.
- (3) "Indirect additives" means additives that are materials or equipment that come in contact with drinking water or come in contact with drinking water direct additives. Examples of indirect additives include the following:
 - (A) Pipes.
 - (B) Valves and related products.
 - (C) Barrier materials.
 - (D) Joining and sealing materials.
 - (E) Protective materials and related products.

(F) Mechanical devices used in treatment, transmission, and distribution systems.

(4) "Operator" means the person in direct or responsible charge and supervising the operation of a: ~~wastewater or~~

(A) water treatment plant;

(B) **wastewater treatment plant;** or a

(C) water distribution system.

(5) "Public water system" means a ~~public water supply system~~ for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals, ~~daily at least sixty (60) days out of the year.~~ The term includes any collection, treatment, storage, and distribution facilities under control of the operator of ~~such the~~ system and used primarily in connection with ~~such the~~ system, and any collection or pretreatment storage facilities not under such control that are used primarily in connection with ~~such the~~ system.

(Water Pollution Control Board; 327 IAC 8-1-3; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2492; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1622; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 4. 327 IAC 8-1-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-1-4 Incorporation by reference

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-14-8

Sec. 4. The following materials, including titles and the names and addresses of where they may be located for inspection and copying, are incorporated by reference into this rule:

(1) ~~"NSF Listings, "Drinking Water Additives Treatment Chemicals-Health Effects", November 13, 1997, October 1, 2003, National Sanitation Foundation (NSF) International, 3475 Plymouth Road, Ann Arbor, Michigan, 48113-0140 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.~~

(2) ~~"Classified or Recognized "Drinking Water Systems Components, Component Materials and Treatment Additives Directory", August, 1997, Underwriters Laboratory, Inc., Engineering Services, 416C, 333 Pfingsten Road, Northbrook, Illinois, Components-Health Effects", October 22, 2003, National Sanitation Foundation (NSF) International, 3475 Plymouth Road, Ann Arbor, Michigan 48113-0140 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.~~

(Water Pollution Control Board; 327 IAC 8-1-4; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2493; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 5. 327 IAC 8-3-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-12; IC 13-18-4-1

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-17.6; IC 25-31; IC 25-39-3

Sec. 1. In addition to the definitions contained in IC 13-11-2 and ~~327 IAC 8-1~~, 327 IAC 8-1, the following definitions apply throughout

this rule:

(1) "Connection ban" means an order imposed by the commissioner in accordance with section 4.2 of this rule.

(2) ~~"Distribution system" means the piping, storage structures, pumps, and controls used to deliver water to the public.~~

(3) (2) "Early warning order" means an order imposed by the commissioner in accordance with section 4.2 of this rule.

(4) (3) "Experimental permit" means a construction permit issued for an installation, treatment process, or technique for which extensive experience and records of use have not been accumulated to meet the Safe Drinking Water Act requirements.

(4) "Licensed professional geologist" means a person who is licensed as a professional geologist under IC 25-17.6.

(5) "Licensed well driller" means a person who is licensed as a well driller under IC 25-39-3.

(6) (6) "Normal operating pressure" means the water main pressure maintained regardless of public service load in the absence of extenuating circumstances.

(6) ~~"Operator" means the person in direct or responsible charge and supervising the operation of a wastewater or water treatment plant or a water distribution system.~~

(7) "Peak operating flow rate" means the flow rate equal to the maximum achievable capacity of the public water system.

(8) "Professional engineer" means a person who is registered as a professional engineer by the Indiana state board of registration for professional engineers under IC 25-31.

(9) ~~"Public water system" means a public water supply for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.~~

(10) (9) "Satisfactory quality" means the physical, chemical, and bacteriological quality of drinking water meeting the requirements set forth in this article.

(10) "Small transient noncommunity public water system" means a public water system that:

(A) meets the definition of a transient noncommunity public water system under 327 IAC 8-2-1;

(B) serves two hundred fifty (250) or fewer individuals per day; and

(C) does not utilize surface water or ground water under the influence of surface water as its water source.

(11) "Two (2) year average peak" means the arithmetic mean of the highest five (5) daily pumpages as reported over the previous two (2) year period on the public water system's monthly report of operations on record with the department. If the public water system is less than two (2) years old, the term means the arithmetic mean of the highest five (5) daily pumpages as reported on the public water system's monthly report of operations on record with the department.

(12) "Water main" means any pipe located between all entry points to the water distribution system and ~~all customer service connection meters; the premises of the consumer.~~

(Water Pollution Control Board; 327 IAC 8-3-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 709; filed Oct 22, 1991, 5:00 p.m.: 15 IR 223; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2493; filed Mar 6, 2000, 7:56 a.m.: 23

IR 1626; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 6. 327 IAC 8-3-1.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-1.1 Proof of capacity

Authority: IC 13-13-5; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-21-3
Affected: IC 13-18-16

Sec. 1.1. (a) A new community public water ~~supply~~ system and a new nontransient noncommunity public water ~~supply~~ system that will commence operation after October 1, 1999, must fulfill the requirements of 327 IAC 8-3-6 ~~prior to before~~ making a submission to the commissioner for a permit to construct as described in sections 2 and 3 of this rule.

(b) The commissioner shall deny and return to the applicant a construction permit application, plans, or specifications that are submitted for review without the proof of public water ~~supply~~ system technical, financial, and managerial capacity as required by 327 IAC 8-3-6. (*Water Pollution Control Board; 327 IAC 8-3-1.1; filed Aug 10, 1999, 8:54 a.m.: 22 IR 3678; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 7. 327 IAC 8-3-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-2 Permits for construction of public water systems; exemptions, experimental construction permits, emergency construction permits, after-the-fact construction permits

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. (a) No person shall cause or allow the construction, installation, or modification of any facility, equipment, or device for any public water system without having a valid construction permit issued by the commissioner, except for replacement of equipment of similar design and capacity, none of which will change adversely the plant operation, its hydraulic design or waste products, or the **water** distribution system design, operation, or capacity **or where specifically allowed in section 2.1 of this rule.**

(b) After the commissioner has granted a construction permit, no changes in the application, plans, or specifications shall be made other than changes involving the replacement of equipment of similar design and capacity, none of which will change adversely:

- (1) the plant operation;
- (2) its hydraulic design or waste products; or
- (3) the **water** distribution system design, operation, or capacity; without first submitting in writing to the commissioner a detailed statement of ~~such the~~ proposed changes and receiving an amended construction permit from the commissioner. Construction permits shall become void if the construction is not started within one (1) year from the date of issuance of the permit unless the duration of the permit has been extended by the commissioner after receiving a written request from the permittee, ~~prior to before~~ the expiration of the permit, requesting ~~such the~~ extension with no other changes to the permit, application, plans, or specifications as approved by the commissioner.

(c) The commissioner shall have the authority to specify in the permit any limits and conditions necessary to meet the issuance

requirements of section 4 of this rule.

(d) The commissioner may revoke any construction permit for noncompliance with the limits and conditions specified in the permit, or if significant and unapproved changes are made in construction that differ from the application, plans, and specifications on which the issuance of the permit was based.

(e) The commissioner may issue construction permits for public water system facilities, equipment, or devices that are to be installed or constructed in stages. These construction permits may allow site preparation or foundation construction to begin where the following conditions have been met:

- (1) Plans and specifications for additional facilities, equipment, or devices that will be used in the treatment, pumping, withdrawal, or conveyance of water for public consumption must be approved by the commissioner ~~prior to before~~ the construction of ~~said the~~ facilities, equipment, or devices in accordance with this section.
- (2) Public water system facilities, equipment, or devices that are not used for the treatment, pumping, withdrawal, or conveyance of water for public consumption must conform to the requirements of the "Recommended Standards for Water Works" established by the Great Lakes—Upper Mississippi River Board of State Public Health and Environmental Managers, and the American Water Works Association (AWWA) standards **or other standards set out in this rule, 327 IAC 8-3.1, 327 IAC 8-3.2, 327 IAC 8-3.3, 327 IAC 8-3.4, 327 IAC 8-3.5, 327 IAC 8-4, and 327 IAC 8-6.**

(f) In order to encourage the development of new or more efficient treatment processes, the following type of construction permits may be issued:

- (1) Experimental construction permits may be issued by the commissioner for installations, treatment processes, or techniques that have not developed extensive experience or records of use in the state of Indiana, provided that the applicant submits evidence that the installation, process, or technique will produce drinking water of satisfactory quality and normal operating pressure at the peak operating flow rate in accordance with this article.
- (2) Regular construction permits may be issued for installations, treatment processes, or techniques that have been used for sufficient time to show that the installation, treatment process, or technique will produce drinking water of satisfactory quality and normal operating pressure at the peak operating flow rate in accordance with this article.

(g) For an emergency condition, as a result of a drought, storm, flood, or other natural or manmade disaster, the commissioner may issue an emergency construction permit.

(h) An after-the-fact construction permit must be obtained from the commissioner upon notification to the public water system by the commissioner of completed or progressing construction, installation, or modification of any facility, equipment, or device for any public water system lacking a valid construction permit issued from the department, except where replacement of equipment of similar design and capacity will not change adversely the plant operation, its hydraulic design or waste products, or the **water** distribution system design, operation, or capacity. The following additional conditions apply to after-the-fact construction permits:

- (1) The commissioner may order that no additional construction may commence or continue progress until the after-the-fact construction permit has been obtained.

- (2) As-built plans and specifications certified by a professional engineer registered in Indiana, covering all work performed without a valid construction permit issued by the commissioner must be submitted to the commissioner within one hundred twenty (120) days of notification to the public water system by the commissioner.
- (3) Modifications as required by the commissioner after review of the as-built plans and specifications shall be made within the time limits specified by the commissioner.
- (4) The commissioner may require interim measures taken during review of an after-the-fact construction permit, including boil orders to ensure safe drinking water of satisfactory quality and normal operating pressure at the peak operating flow rate in accordance with this article.
- (5) An after-the-fact construction permit does not relieve a public water system or any other person of any liability for construction without a valid permit from the commissioner.

(Water Pollution Control Board; 327 IAC 8-3-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 709; filed Oct 22, 1991, 5:00 p.m.: 15 IR 224; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2494; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 8. 327 IAC 8-3-2.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-3-2.1 Permits for construction of small transient noncommunity public water systems

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-31-14-19

Sec. 2.1. (a) Small transient noncommunity public water systems may construct facilities specified in 327 IAC 8-4-2 without obtaining a construction permit, provided that they have met all the conditions set forth in that section.

(b) For construction at small transient noncommunity public water systems that are not subject to subsection (c), the design as shown on an application, plans, and specifications may be certified by any of the following:

- (1) A professional engineer.
- (2) A licensed well driller.
- (3) A licensed professional geologist.

(c) As required under IC 25-31-14-19(a), design on construction and maintenance projects for:

- (1) a county;
- (2) a city;
- (3) a town;
- (4) a township;
- (5) a school corporation; or
- (6) any other political subdivision;

must have a professional engineer certify that the design as shown on the application, plans, and specifications are in compliance with the rule.

(d) Where a permit is required, an application form shall be submitted in accordance with section 3 of this rule. If specifications for small transient noncommunity public water systems are not included in this section, the requirements of section 2 of this rule must be met. (Water Pollution Control Board; 327 IAC 8-3-2.1)

SECTION 9. 327 IAC 8-3-3 IS AMENDED TO READ AS

FOLLOWS:

327 IAC 8-3-3 Application for permits

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

Affected: IC 4-21.5-3-5; IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 3. (a) A properly executed application form shall accompany the plans and specifications submitted to the commissioner for the purposes of obtaining a permit. Application forms may be obtained from the commissioner upon request or computer-generated if the computer-generated form is similar in appearance and identical in content to the form generated by the commissioner. A properly executed application form shall include the following:

- (1) **The** name, address, identification number, and telephone number of the public water system.
- (2) **The** name, address, and telephone number of the engineering firm or other entity specified in section 2.1 of this rule and the developing firm.
- (3) **The** name, address, and title of the person who is to receive the permit (generally the person representing the funding entity of the construction project).
- (4) **The** location, a brief description, and **the** source of funding for the construction project.
- (5) A list and corresponding mailing labels of all potentially affected parties as defined by IC 4-21.5-3-5(b).
- (6) A dated signature certifying that, to the best of the public water system's knowledge, all potentially affected parties, as defined by IC 4-21.5-3-5(b), have been listed.

(b) The applications, plans, and specifications along with any reports and other information shall be submitted using a format and meeting content requirements approved by the commissioner.

(c) All plans, specifications, and applications must be prepared by or under the direct supervision of a professional engineer registered in Indiana and shall bear the seal and certification of the professional engineer certifying that construction of the proposed project following the application, plans, and specifications will produce drinking water of satisfactory quality and normal operating pressure at the peak operating flow rate in accordance with this article. **Plans, specifications, and applications for small transient noncommunity public water systems must be prepared in accordance with section 2.1 of this rule.**

(d) A proposed construction project that is the subject of an application for a construction permit must be entirely independently based on existing public water system facilities or proposed construction projects with effective construction permits, issued by the commissioner, that are not the subject of the application.

(e) The commissioner may require additional information, within the context of a permit application, to determine whether the proposed facility will meet the issuance requirements of section 4 of this rule.

(f) Whenever the commissioner requires information, within the context of a permit application, regarding existing water supply facilities or water treatment works, or regarding the operation and maintenance thereof, this information shall be submitted to the commissioner within thirty (30) days of such request.

(g) A public water system proposing to install or construct facilities, equipment, or devices under a staged permitting process must submit

proposed schedules for the following along with the initial permit application as allowed under section 2(e) of this rule:

- (1) ~~A proposed schedule for~~ The construction of the entire project.
 - (2) ~~A proposed schedule for~~ The application or applications for the remainder of the staged parts of the total construction project.
- (*Water Pollution Control Board; 327 IAC 8-3-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 710; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2496; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 10. 327 IAC 8-3-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-8 Incorporation by reference

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 8. Recommended Standards for Waterworks, ~~1997~~ **2003** Edition, Great Lakes—Upper Mississippi River Board of State Public Health and Environmental Managers, is incorporated by reference into this rule and may be obtained from Health Education Services, P.O. Box 7126, Albany, New York 12224 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-3-8; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2499; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 11. 327 IAC 8-3.1-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.1-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-12; IC 13-18-4-1

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-31; IC 36-1-2-23

Sec. 1. ~~In addition to (a)~~ The applicable definitions ~~contained~~ in IC 13-11-2 and 327 IAC 8-3.2-1 ~~the following definitions~~ apply throughout this rule.

- (1) ~~“Professional engineer” means a person registered as a professional engineer by the Indiana state board of registration for professional engineers under IC 25-31.~~
- (2) ~~“Water main” means any pipe located between all entry points to the distribution system and all customer service connection meters.~~

~~(3)~~ **For purposes of this rule,** “unit” means county, municipality, or township as set forth in IC 36-1-2-23. (*Water Pollution Control Board; 327 IAC 8-3.1-1; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2499; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 12. 327 IAC 8-3.1-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.1-2 Permitting authority and responsibilities

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-12; IC 13-18-4-1

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. (a) The plans for a water main extension are not required to be submitted to any state agency for a permit, permission, or review, unless required by the federal law, if the following are met:

- (1) A person submits plans to a unit concerning the design or construction of a public water main.
- (2) A professional engineer prepared the plans.
- (3) The unit provided a review of the plans by a qualified engineer

and subsequently approved the plans.

(4) All other requirements specified in this rule and all other rules adopted by the water pollution control board are met.

(b) The proposed construction of a water main must be in accordance with the following:

(1) The Safe Drinking Water Act, 42 U.S.C. 300f-300j-26, as amended*.

(2) The Clean Water Act, 33 U.S.C. 1251-1387, as amended**.

(c) The other requirements specified in rules that have been adopted by the water pollution control board and must be adhered to in the permitting of a public water main include the following:

(1) 327 IAC 8-1: Public Water Supply Direct Additive and Indirect Additive Standards.

(2) 327 IAC 8-2: Drinking Water Standards.

(3) 327 IAC 8-3.2: Technical Standards for Water Mains.

(4) 327 IAC 8-3.3: Public Water System Quantity Requirement Standards.

~~(5) 327 IAC 8-7: Water Supply and Distribution Systems; Schools and Related~~ **327 IAC 8-3.3-4: Additional public water system quantity requirement standards for school buildings and related facilities.**

~~(6) 327 IAC 8-8: Water Supply and Distribution Systems; 327 IAC 8-3.3-5: Additional public water system quantity requirement standards for mobile home parks.~~

~~(7) 327 IAC 8-9: Water Supply and Distribution Systems; 327 IAC 8-3.3-6: Additional public water system quantity requirement standards for agricultural labor camps.~~

(8) 327 IAC 8-10: Cross Connections; Control; Operation.

(d) Units shall notify the commissioner of all public water main construction permits that the unit has issued by submitting to the department, on the effective date of the permit, a copy of each issued permit. Each submission shall contain the following information for each issued permit:

(1) ~~The~~ identification number that has been issued by the local unit.

(2) ~~The~~ effective date of the permit.

(3) The county where the construction project is to be located.

(4) The location of the construction project in terms of the following:

(A) ~~The~~ nearest public intersection.

(B) Quarter section, section, township, and range of the approximate center of the construction project.

(C) If the information requested by clause (B) is not available, the latitude and longitude of the approximate center of the construction project to the nearest fifteen (15) seconds.

(5) The maximum number of proposed service connections to the water main.

(6) A description and numerical count of the type or types of facilities to be located at each proposed service connection whether:

(A) residential;

(B) commercial; or

(C) industrial.

(7) A project layout map on an eight and one-half (8.5) inch by eleven (11) inch sheet of paper.

(e) The commissioner may approve alternatives to the notification procedure described in subsection (d) if requested. The alternative notification procedure must provide equivalent information to that required under subsection (d) to be considered for approval.

*The Safe Drinking Water Act as amended on August 6, 1996, is incorporated by reference and may be found at 42 U.S.C. 300f to 42 U.S.C. 300j-26 and is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

**The Clean Water Act in effect on January 1, 1989, and amended on December 16, 1996, is incorporated by reference and may be found at 33 U.S.C. 1251 to 33 U.S.C. 1387 and is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-3.1-2; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2499; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 13. 327 IAC 8-3.2-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-1 Definitions

Authority: IC 13-13-5-1; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3-1; IC 13-18-4-1

Affected: IC 13-11-2; IC 25-31

Sec. 1. In addition to the definitions contained in IC 13-11-2 and 327 IAC 8-3-1, the following definitions apply throughout this rule:

- (1) "100-year flood" means a flood with an occurrence probability of one percent (1%) each year as determined by the Indiana department of natural resources.
- (2) "Accessories" means the constituent elements of a water main, such as **the following**:
 - (A) Pipes.
 - (B) Fittings.
 - (C) Valves.
 - (D) Pumps. ~~and~~
 - (E) Hydrants.
- (3) "ASTM standards" means the recommended standards certified by the American Society for Testing and Materials.
- (4) "AWWA/ANS standards" means the American National Standard approved by the American Water Works Association.
- (5) "Dead-end main" means a portion of a water main that has:
 - (A) flow in only one (1) direction; and ~~has~~
 - (B) no planned future extension.
- (6) "Fire flow" means the rate of water flow intended for providing fire protection.
- (7) "Nonpermeable" means to be constructed of ductile iron with solvent resistant gasket materials or welded steel pipes.
- (8) "Normal operating pressure" means the water main pressure maintained regardless of public service load in the absence of extenuating circumstances.
- (9) "Professional engineer" means a person who is registered as a professional engineer by the Indiana state board of registration for professional engineers under IC 25-31.
- ~~(10)~~ (8) "Transmission main" means any pipe that:
 - (A) transports water from a:
 - (i) surface water intake to a surface water treatment plant; **or**
 - (B) transports water from a ground water intake (ii) well to a water treatment plant; ~~(if present);~~
 - ~~(C)~~ (B) transports:

(i) finished water from the treatment plant ~~(if present)~~ to the entry point ~~of to~~ the water distribution system; or

(ii) water from a well to the entry point to the water distribution system if there is no water treatment plant; **or**

~~(D)~~ (C) is installed for the purpose of interconnecting separate public water systems.

~~(11)~~ "Two (2) year average peak" means the arithmetic mean of the highest five (5) daily pumpages as reported over the previous two (2) year period on the public water system's monthly report of operations on record with the department: If the public water system is less than two (2) years old; the term means the arithmetic mean of the highest five (5) daily pumpages as reported on the public water system's monthly report of operations on record with the department.

~~(12)~~ "Water main" means any pipe located between all entry points to the distribution system and all customer service connection meters.

(*Water Pollution Control Board; 327 IAC 8-3.2-1; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2500; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 14. 327 IAC 8-3.2-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-2 Incorporation by reference

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. ~~(a)~~ The following materials, including titles and the names and addresses of where they may be located for inspection and copying, are incorporated by reference into this rule:

(1) The American Society for Testing and Materials standards listed throughout this rule are available in the ~~1996~~ **2004** Annual Book of ASTM Standards, Part 34, Plastic Pipe and Building Products, ~~1996~~ **2004** Edition, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.

(2) The American Water Works Association (AWWA) standards listed throughout this rule are available from the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. Notwithstanding language to the contrary in the primarily incorporated documents, the version of all secondarily incorporated documents, which are documents referred to in the primarily incorporated documents, shall be the version in effect on the date of final adoption of this rule.

~~(b)~~ The technical standards presented in subsection (a) are continuously revised on a twenty-four (24) month cycle. The commissioner shall commence rulemaking efforts to update the documents incorporated by reference in this section. (*Water Pollution Control Board; 327 IAC 8-3.2-2; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2500; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 15. 327 IAC 8-3.2-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-4 Certification

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 4. A professional engineer must certify that the water main designs as shown on the application, plans, and specifications are in compliance with this rule **except as allowed by 327 IAC 8-3-2.1.** (*Water Pollution Control Board; 327 IAC 8-3.2-4; filed Mar 31, 1999, 1:50 p.m.; 22 IR 2501; readopted filed Jan 10, 2001, 3:23 p.m.; 24 IR 1518*)

SECTION 16. 327 IAC 8-3.2-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-8 Water main materials

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 8. (a) All piping, accessories, and other materials in a water main shall conform to 327 IAC 8-1, contain less than eight percent (8%) by mass lead, and conform to the following applicable standards:

(1) For ductile-iron and fittings, the following standards apply:

(A) ~~E104/A21.4-95~~ **C104/A21.4-2003** American National Standard for Cement-Mortar Lining for Ductile-Iron Pipe and Fittings for Water.

(B) ~~E105/A21.5-93~~ **C105/A21.5-1999** American National Standard for Polyethylene Encasement for Ductile-Iron Pipe Systems.

(C) ~~E110/A21.10-93~~ **C110/A21.10-2003** American National Standard for Ductile-Iron and Gray-Iron Fittings, 3 In. through 48 In. (75 mm through 1,200 mm), for Water and Other Liquids.

(D) ~~E111/A21.50-90~~ **C111/A21.11-2000** American National Standard for Rubber-Gasket Joints for Ductile-Iron Pressure Pipe and Fittings.

(E) ~~E115/A21.15-94~~ **C115/A21.15-1999** American National Standard for Flanged Ductile-Iron Pipe or Gray-Iron Threaded Flanges.

(F) ~~E150/A21.50-91~~ **C150/A21.50-2002** American National Standard for the Thickness Design of Ductile-Iron Pipe.

(G) ~~E151/A21.51-91~~ **C151/A21.51-2002** American National Standard for Ductile-Iron Pipe, Centrifugally Cast, for Water. ~~or Other Liquids.~~

(H) ~~E153/A21.53-94~~ **C153/A21.53-2000** American National Standard for Ductile-Iron Compact Fittings ~~3 In. through 24 In. (76 mm through 610 mm) and 54 In. through 64 In. (1,400 mm through 1,600 mm);~~ for Water Service.

(2) For steel pipe, the following standards apply:

(A) ~~E200-91~~ **C200-97** AWWA Standard for Steel Water Pipe, 6 In. (150 mm) and Larger.

(B) ~~E203-91~~ **C203-02** AWWA Standard for Coal-Tar Protective Coatings and Linings for Steel Water Pipelines-Enamel and Tape-Hot-Applied (**includes revisions C203a-99**).

(C) ~~E205-89~~ **C205-00** AWWA Standard for Cement-Mortar Protective Lining and Coating for Steel Water Pipe-4 In. and Larger-Shop Applied.

(D) ~~E206-91~~ **C206-97** AWWA Standard for Field Welding of Steel Water Pipe.

(E) ~~E207-94~~ **C207-01** AWWA Standard for Steel Pipe Flanges for Waterworks Service-Sizes 4 In. through 144 In. (100 mm through 3,600 mm).

(F) ~~E208-83(R89)~~ **C208-01** AWWA Standard for Dimensions for

Fabricated Steel Water Pipe Fittings.

(G) ~~E209-90~~ **C209-00** AWWA Standard for Cold-Applied Tape Coatings for the Exterior of Special Sections, Connections, and Fittings for Steel Water Pipelines.

(H) ~~E210-92~~ **C210-03** AWWA Standard for Liquid-Epoxy Coating Systems for the Interior and Exterior of Steel Water Pipelines.

(I) ~~E213-91~~ **C213-01** AWWA Standard for Fusion-Bonded Epoxy Coating for the Interior and Exterior of Steel Water Pipelines.

(J) ~~E214-89~~ **C214-00** AWWA Standard for Tape Coating Systems for the Exterior of Steel Water Pipelines. (~~includes addendum E214a-91~~).

(K) ~~E215-94~~ **C215-04** AWWA Standard for Extruded Polyolefin Coatings for the Exterior of Steel Water Pipelines.

(L) ~~E216-94~~ **C216-00** AWWA Standard for Heat-Shrinkable Cross-Linked Polyolefin Coatings for the Exterior of Special Sections, Connections, and Fittings. ~~for Steel Water Pipelines.~~

(M) ~~E217-90~~ **C217-04** AWWA Standard for Cold-Applied Petrolatum Tape and Petroleum Wax Tape Coatings for the Exterior of Special Sections, Connections, and Fittings for Buried Steel Water Pipelines.

(N) ~~E218-91~~ **C218-02** AWWA Standard for Coating the Exterior of Aboveground Steel Water Pipelines and Fittings.

(O) ~~E219-91~~ **C219-01** AWWA Standard for Bolted, Sleeve-Type Couplings for Plain-End Pipe.

(P) ~~E220-92~~ **C220-98** AWWA Standard for Stainless-Steel Pipe, 4 In. (100 mm) and Larger.

(3) For concrete pipe, the following standards apply:

(A) ~~E300-89~~ **C300-04** AWWA Standard for Reinforced Concrete Pressure Pipe, Steel-Cylinder Type. ~~for Water and Other Liquids (includes addendum E300a-93).~~

(B) ~~E301-92~~ **C301-99** AWWA Standard for Prestressed Concrete Pressure Pipe, Steel-Cylinder Type. ~~for Water and Other Liquids.~~

(C) ~~E302-95~~ **C302-04** AWWA Standard for Reinforced Concrete Pressure Pipe, Noncylinder Type.

(D) ~~E303-95~~ **C303-02** AWWA Standard for Concrete Pressure Pipe, Bar-Wrapped, Steel-Cylinder Type.

(E) ~~E304-92~~ **C304-99** AWWA Standard for Design of Prestressed Concrete Cylinder Pipe.

(4) For asbestos-cement pipe, the following standards apply:

(A) ~~E400-93~~ **C400-03** AWWA Standard for Asbestos-Cement Pressure Pipe, 4 In. through 16 In. (100 mm through 400 mm), for Water Distribution Systems. ~~and Transmission.~~

(B) ~~E401-93~~ **C401-03** AWWA Standard for the Selection of Asbestos-Cement Pressure Pipe, 4 In. through 16 In. (100 mm through 400 mm), for Water Distribution Systems.

(C) ~~E402-89~~ **C402-00** AWWA Standard for Asbestos-Cement Transmission Pipe, 18 In. through 42 In. (450 mm through 1,050 mm), for Potable Water ~~and Other Liquids.~~ **Supply Services.**

(D) ~~E403-89~~ **C403-00** AWWA Standard for the Selection of Asbestos-Cement Transmission and Feeder Main Pipe, Sizes 18 In. through 42 In. (450 mm through 1,050 mm).

(5) For valves and hydrants, the following standards apply:

(A) ~~E500-93~~ **C500-02** AWWA Standard for Metal-Seated Gate Valves for Water Supply Service (includes addendum C500a-95).

~~(B) E501-92 AWWA Standard for Cast-Iron Sluice Gates.~~

~~(C) E502-94 AWWA Standard for Dry-Barrel Fire Hydrants (includes addendum C502a-95).~~

~~(D) E503-88~~ **(C) C503-07** AWWA Standard for Wet-Barrel Fire Hydrants.

~~(E) E504-94~~ **(D) C504-00** AWWA Standard for Rubber-Seated

Butterfly Valves.

~~(F) C507-91~~ **(E) C507-99** AWWA Standard for Ball Valves 6 In. through 48 In. (150 mm through 1,200 mm).

~~(G) C508-93~~ **(F) C508-01** AWWA Standard for Swing-Check Valves for Waterworks Service, 2 In. (50 mm) through 24 In. (600 mm) NPS. ~~(includes addendum C508a-93).~~

~~(H) C509-94~~ **(G) C509-01** AWWA Standard for Resilient-Seated Gate Valves for Water Supply Service. ~~(includes addendum C509a-95).~~

~~(I) C510-92~~ **(H) C510-97** AWWA Standard for Double Check Valve Backflow-Prevention Assembly.

~~(J) C511-92~~ **(I) C511-97** AWWA Standard for Reduced-Pressure Principle Backflow-Prevention Assembly.

~~(K) C512-92~~ **(J) C512-04** AWWA Standard for Air-Release, Air/Vacuum, and Combination Air Valves for Waterworks Service.

~~(L) C540-93~~ **(K) C540-02** AWWA Standard for Power-Actuating Devices for Valves and Sluice Gates.

~~(M) C550-90~~ **(L) C550-01** AWWA Standard for Protective Epoxy Interior Coatings for Valves and Hydrants.

(M) C560-00 AWWA Standard for Cast-Iron Slide Gate.

(6) For plastic pipe, the following standards apply:

(A) ~~C900-89~~ **C900-97** AWWA Standard for Polyvinyl Chloride (PVC) Pressure Pipe, 4 In. through 12 In., for Water Distribution. ~~(includes addendum C900a-92).~~

(B) ~~C901-88~~ **C901-02** AWWA Standard for Polyethylene (PE) Pressure Pipe and Tubing, ½ In. through 3 In., for Water Service.

(C) ~~C905-88~~ **C905-97** AWWA Standard for Polyvinyl Chloride (PVC) Water Transmission Pipe, Nominal Diameters 14 In. through 36 In.

(D) ~~C906-90~~ **C906-99** AWWA Standard for Polyethylene (PE) Pressure Pipe and Fittings, 4 In. through 63 In., for Water Distribution and Transmission.

(E) C907-91 AWWA Standard for Polyvinyl Chloride (PVC) Pressure Fittings for Water, 4 In. through 8 In. (100 mm through 200 mm).

(F) American Society for Testing and Materials (ASTM) ~~D2239-96A~~ **D2239-03** Standard Specifications for PE Plastic Pipe (SDR-PR) Based on Controlled Inside Diameter.

(G) ASTM ~~D2241-96A~~ **D2241-04A** Standard Specifications for Polyvinyl Chloride (PVC) Plastic Pressure-Rated Pipe (SDR-PR). (SDR Series).

(H) ASTM ~~D3350-96~~ **D3350-02A** Standard Specifications for PE Polyethylene Plastic Pipe and Fitting Fittings Materials.

(b) All water mains installed in areas of ground water contamination, consisting of solvent, petroleum, or other volatile or semivolatile organic compounds, shall be constructed with nonpermeable piping and accessories.

(c) Piping and accessories previously used exclusively for water mains may be reused if **the piping or accessories**:

- (1) **the piping or accessories** comply with the requirements of subsection (a); and
- (2) **the piping or accessories** have been restored to their original condition.

(d) All connections between pipes shall have mechanical joints or slip-on joints with rubber gaskets with the exception of:

- (1) steel pipe that may be welded;
- (2) polyethylene (PE) pipes that may be thermojoined by a person who is a manufacturer's certified thermojoiner; or

(3) piping described in section 10(d) of this rule.

(e) Water mains constructed with PVC and installed under existing or proposed roadways and railroads shall be cased in conformance with AWWA Standard ~~C900-89; Appendix A C900-97~~ or AWWA Standard ~~C905-88; Appendix A C905-97~~.

(f) Water mains that are cased shall conform to AWWA Standard ~~C600-93; Section 6: C600-99~~.

(g) Water mains constructed with nonmetallic materials must be equipped with tracing wire or other metallic identification equipment. (*Water Pollution Control Board; 327 IAC 8-3.2-8; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2502; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 17. 327 IAC 8-3.2-11 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-11 Flow rate and pressure in the water main

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 11. (a) The flow rate and the pressure requirements of subsection (b) shall be provided at all service connections in a water main extension applicable to this rule.

(b) At a flow rate equal to the peak daily customer demand as determined in 327 IAC 8-3.3-2, the normal operating pressure in the water main shall not be less than twenty (20) psi under all conditions of flow at the ground level at all points in the water main when demonstrated in conformance with subsection (c).

(c) The flow rate and the pressure requirements of subsection (b) shall be demonstrated to the commissioner with either:

- (1) a computer-based model; or
- (2) other hydraulic calculations.

(d) In addition to the requirements in subsections (a) through (c), the water supply and water distribution system at noncommunity public water systems shall be sized and constructed to deliver water at twenty (20) pounds per square inch minimum pressure to all fixtures and appurtenances during periods of peak water demand. (*Water Pollution Control Board; 327 IAC 8-3.2-11; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2505; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 18. 327 IAC 8-3.2-17 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-17 Installation

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 17. (a) All water mains and their accessories shall be installed and pressure and leak tested in accordance with the applicable provisions of **one (1) of the following**:

(1) C600-99 AWWA Standard ~~C600-93; C602-89; C603-90~~; **for Installation of Ductile-Iron Water Mains and Their Appurtenances.**

(2) C602-00 AWWA Standard for Cement-Mortar Lining of Water Pipelines in Place, 4 in (100 mm) and Larger.

(3) C603-96(R00) AWWA Standard for Installation of Asbestos Cement Pressure Pipe.

(4) C605-94 or C606-87: AWWA Standard for Underground Installation of Polyvinyl Chloride (PVC) Pressure Pipe and Fittings for Water.

(5) C606-04 AWWA Standard for Grooved and Shouldered Joints.

If an AWWA Standard is not available for the particular installation, the manufacturer's recommended installation procedure shall be followed.

(b) Continuous and uniform bedding shall be provided in the trench for all buried pipe. Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. All stones unable to pass through a U.S. Standard Sieve opening of two (2) inches that are found in the trench within six (6) inches of the outside edge of the pipe shall be removed.

(c) All necessary reaction blocking, tie rods, or joints designed to prevent movement for pipes and fittings (regardless of material type) at tees, bends, plugs, and hydrants shall be installed to prevent movement in conformance with AWWA Standard ~~C600-93, Section 3-8:~~ **C600-99.**

(d) Water mains shall be covered with earthen cover in accordance with the following:

Depth of Cover Requirements for Water Mains

County	Cover ⁽¹⁾ (in)
Adams	60
Allen	60
Bartholomew	48
Benton	60
Blackford	60
Boone	54
Brown	48
Carroll	60
Cass	60
Clark	36
Clay	54
Clinton	54
Crawford	36
Daviess	48
Dearborn	48
Decatur	48
Dekalb	60
Delaware	60
Dubois	42
Elkhart	60
Fayette	54
Floyd	36
Fountain	60
Franklin	48
Fulton	60
Gibson	42
Grant	60
Greene	54
Hamilton	54
Hancock	54

Harrison	36
Hendricks	54
Henry	54
Howard	60
Huntington	60
Jackson	48
Jasper	60
Jay	60
Jefferson	42
Jennings	48
Johnson	54
Knox	48
Kosciusko	60
LaGrange	60
Lake	60
LaPorte	60
Lawrence	48
Madison	60
Marion	54
Marshall	60
Martin	48
Miami	60
Monroe	48
Montgomery	60
Morgan	48
Newton	60
Noble	60
Ohio	42
Orange	42
Owen	54
Parke	60
Perry	36
Pike	42
Porter	60
Posey	42
Pulaski	60
Putnam	54
Randolph	54
Ripley	48
Rush	54
St. Joseph	60
Scott	36
Shelby	54
Spencer	36
Starke	60
Steuben	60
Sullivan	54
Switzerland	42
Tippecanoe	60
Tipton	60
Union	48
Vanderburgh	36
Vermillion	60
Vigo	60

Wabash	60
Warren	60
Warrick	36
Washington	36
Wayne	54
Wells	60
White	60
Whitley	60

⁽¹⁾ The cover dimension is measured from the top of pipe to the proposed finish grade.

(*Water Pollution Control Board; 327 IAC 8-3.2-17; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2506; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 19. 327 IAC 8-3.2-18 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-18 Disinfection

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 18. (a) All new, cleaned, or repaired water mains shall be disinfected in accordance with ~~C651-99~~ AWWA Standard ~~€651-92~~ **for Disinfecting Water Mains.**

- (b) All chlorinated water shall be disposed of by either **disposal to a:**
- (1) ~~disposal to a~~ sanitary sewer with the approval of the local sewer authority; or
 - (2) ~~disposal to a~~ location other than a sanitary sewer after obtaining a discharge permit from the commissioner.

(c) All laboratory reports documenting the conformance with AWWA Standard ~~€651-92~~ **C651-99**, Section 7, shall be submitted to the commissioner before the water main is brought into service. The laboratory used shall be approved by the commissioner. The laboratory report presenting the sample results shall be sent to the commissioner within ten (10) working days of receipt from the laboratory. The laboratory results shall have the commissioner's assigned permit number marked on the upper right hand corner of the top page. (*Water Pollution Control Board; 327 IAC 8-3.2-18; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2508; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 20. 327 IAC 8-3.2-20 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-20 Technical standard alternative demonstration

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 20. (a) An alternative to technical standards required by this rule may be approved by the commissioner for either a single application or for public water system-wide applications of the technical standard if the applicant demonstrates in a written submission that the alternative will achieve the following:

- (1) Meet the issuance requirements of 327 IAC 8-3-4.
- (2) Provide drinking water of at least the same satisfactory quality and normal operating pressure at the peak operating flow rate as the technical standards of this rule would provide.

(b) An alternative to technical standards required by this rule

may be approved by the commissioner for all systems or a specific subset of systems if the alternative will achieve the following:

- (1) Meet the issuance requirements of 327 IAC 8-3-4.**
- (2) Provide drinking water of at least the same satisfactory quality and normal operating pressure at the peak operating flow rate as the technical standards of this rule would provide.**

~~(b)~~ **(c)** An approved alternative to a technical standard shall be in effect for one (1) year from the commissioner's approval of that alternative standard.

~~(c)~~ **(d)** An alternative to a technical standard **approved under subsection (a)** shall only apply to the application or the public water system for which the alternative is requested. (*Water Pollution Control Board; 327 IAC 8-3.2-20; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2508; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 21. 327 IAC 8-3.3-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.3-4 Additional public water system quantity requirement standards for school buildings and related facilities

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 4. (a) All school buildings and related facilities shall be supplied with safe, potable water from an approved source and an approved **water** distribution system.

(b) The drinking water for school buildings and related facilities shall be supplied at the flow rate and pressure required by 327 IAC 8-3.2-11 and at the quality required by 327 IAC 8-2 and in accordance with the following:

- (1) The water supply and **water** distribution system shall be sized and constructed to deliver water at twenty (20) pounds per square inch minimum pressure to all fixtures and appurtenances during periods of peak water demand.
- (2) Notwithstanding subdivision (1), school buildings may be served by hand-operated well pumps where religious custom precludes using electrically or gasoline driven well pumps providing the well and well pump are located and constructed in compliance with this rule and applicable sections of 410 IAC 6-5.1.

(c) A connection to a public water ~~supply system~~ shall be made with its potable water used exclusively wherever ~~such supply the system~~ is available or becomes available within a reasonable distance from the school facility, with the exception that nonpotable sources of water are available and may be utilized for the following nonpotable activities:

- (1) Lawn sprinkling.
- (2) Bus washing.
- (3) Firefighting.
- (4) Other nonpotable uses provided by a nonpotable distribution system having no connection to the potable system.

(d) Where a community public water ~~supply system~~ is not available, a properly located and constructed private water supply shall be provided. Beginning on the effective date of this rule, all new and modified public water systems exclusively serving schools and related facilities shall be equipped with a backup system capable of providing

drinking water in accordance with subsection (b).

(e) Well pumps, pressure tanks, storage tanks, treatment facilities, and piping shall be sized to meet peak daily consumer demands. The minimum usable capacity of the pressure tank, in gallons, shall be three (3) times the installed well pump capacity in gallons per minute. For example, a pump of thirty (30) gallons per minute capacity would require a pressure tank of ninety (90) gallons usable capacity. If the well or pump cannot meet peak demands, sufficient additional usable storage capacity shall be provided to meet peak demands.

(f) Each school building or addition to a school building may have a potable water supply where necessary to provide adequate service. However, where two (2) or more school potable water supply systems are located on the same site, the water supply systems shall be sufficiently interconnected to allow for the maximum possible utilization of each should a system fail.

(g) Unless lower water system demands can be documented to the satisfaction of the commissioner, all school buildings and additions to school buildings constructed after February 17, 1985, shall have a water supply system capable of furnishing a minimum of:

- (1) fifteen (15) gallons per day per student up through the elementary grades;
- (2) twenty-five (25) gallons per day per student in grades greater than elementary; and
- (3) one hundred (100) gallons per day per dormitory bed based on maximum building occupancy.

(Water Pollution Control Board; 327 IAC 8-3.3-4; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2511; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 22. 327 IAC 8-3.3-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.3-5 Additional public water system quantity requirement standards for mobile home parks

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 5. (a) An accessible, adequate, safe, and potable supply of water shall be provided in all mobile home parks and additions.

(b) Where a public water **supply system** is available, a connection shall be made thereto and its water used exclusively.

(c) A watertight casing pipe extending at least twelve (12) inches above the ground shall surround any part of a suction pipe, drop pipe, or delivery pipe not normally under constant pressure and located within twenty-five (25) feet of the ground surface.

(d) Each mobile home lot shall be provided with a cold water tap extending at least four (4) inches above the ground surface. The outlet shall be protected from freezing by the use of a heater tape, insulation, or draining when not in use. In no case shall a stop-and-waste valve or other device that would allow aspiration, or backflow, or contaminated water into the potable water system be used.

(e) The individual water and sewer connections on each mobile home lot shall be separated not less than five (5) feet horizontally.

(f) The water supply system shall be capable of furnishing a minimum of two hundred (200) gallons per day per mobile home lot in

all mobile home parks constructed after June 14, 1974, as well as in all additions to mobile home parks constructed after the date. (Water Pollution Control Board; 327 IAC 8-3.3-5; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2511; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 23. 327 IAC 8-3.3-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.3-6 Additional public water system quantity requirement standards for agricultural labor camps

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1; IC 16-41-26-8

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 6. (a) An adequate and convenient supply of water that meets the water quality standards of the department pursuant to under 327 IAC 2 shall be available at all times in each agricultural labor camp for culinary, drinking, bathing, and laundry purposes. Where a public water **supply system** is available, it shall be used to provide water for the agricultural labor camp.

(b) A cold water tap shall be available within one hundred (100) feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage. (Water Pollution Control Board; 327 IAC 8-3.3-6; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2512; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 24. 327 IAC 8-3.4-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-1 Definitions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3-1; IC 13-18-4-1

Affected: IC 13-11-2; IC 16-41-26-1; IC 25-17.6; IC 25-31; IC 25-39-3

Sec. 1. In addition to the definitions contained in IC 13-11-2, the following definitions apply throughout this rule:

(1) "Agricultural labor camp" means an area as described in IC 16-41-26-1.

(2) "Annulus" means the space between the exterior of a well casing and the inside diameter of the borehole.

(3) "Bentonite" means ~~clay material composed predominantly of sodium montmorillonite which meets American Petroleum Institute specifications standard 13-A, Drilling Fluid Materials (1985)*. has the meaning set forth in 312 IAC 13-1-4.~~

(4) "Bentonite slurry" means a mixture, made according to manufacturer specifications, of water and commercial grouting or plugging bentonite ~~which that~~ contains high concentrations of solids. The term does not include sodium bentonite products ~~which that~~ contain low solid concentration or ~~which that~~ are designed for drilling fluid purposes.

(5) ~~"Certified professional geologist" means a person who is certified as a professional geologist by the board of certification for professional geologists under IC 25-17-6.~~

(6) (5) "Community public water supply system", or "CPWSS", or "community", or "community public water system" means a public water system that serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(7) (6) "Course grade crushed bentonite" means natural bentonite crushed to an average size range of three-eighths (3/8) to three-

fourths ($\frac{3}{4}$) inches.

~~(8)~~ (7) "Direct additives" means chemical additives that are used in public water systems for the treatment of raw water. Direct additives are also used to protect drinking water during storage and distribution. Examples of direct additives include agents used for the following:

- (A) Coagulation and flocculation.
- (B) Corrosion and scale control.
- (C) Softening.
- (D) Sequestering.
- (E) Precipitation.
- (F) pH adjustment.
- (G) Disinfection.
- (H) Oxidation.

~~(9)~~ "Distribution system" means one (1) of the following:

~~(A)~~ In a community public water supply system, the term means the network of water piping, pumping stations, storage equipment, valves, fire hydrants, pressure regulators, and equipment required to transport water to the customer's service connection from one (1) of the following points:

- ~~(i)~~ A treatment plant.
- ~~(ii)~~ A source of raw water supply if no treatment is provided.

~~(B)~~ In a noncommunity public water supply system, the term means the network of water piping, pumping stations, valves, fire hydrants, pressure regulators, and equipment required to transport water to the point of use from one (1) of the following:

- ~~(i)~~ A point that is one (1) foot beyond the water storage tank
- ~~(ii)~~ The well, if no water storage tank is utilized.

~~(10)~~ (8) "Drawdown" means the vertical difference measured between the static and the pumping water levels. ~~This~~ The term is commonly expressed in units of length.

(9) "Entry point to the water distribution system" means one (1) of the following points:

(A) For public water systems that utilize water treatment facilities, the point at which the drinking water has left the treatment facilities and has entered the water distribution system.

(B) For public water systems that do not utilize water treatment facilities, the point at which the water has left the supply facilities and has entered the water distribution system.

~~(11)~~ (10) "Flowing well" means a well completed in a confined aquifer where the water rises naturally to an elevation above land surface.

~~(12)~~ (11) "Indirect additives" means additives that are materials or equipment that come in contact with drinking water or come in contact with direct additives. Examples of indirect additives include the following:

- (A) Pipes, valves, and related products.
- (B) Barrier or baffle materials.
- (C) Joining and sealing materials.
- (D) Protective materials and related products.
- (E) Mechanical devices or structures used in treatment, storage, transmission, and distribution systems.

~~(13)~~ (12) "Isolation area" means the separation distance of a public water supply system production well from a potential or existing source of contamination or damage as described in section 9 of this rule.

(13) "Licensed professional geologist" means a person who is licensed as a professional geologist by the Indiana board of licensure for professional geologists under IC 25-17.6.

(14) "Licensed well driller" means a person who is licensed as a

well driller under IC 25-39-3.

~~(15)~~ (15) "Medium grade crushed bentonite" means natural bentonite crushed to an average size range of one-fourth ($\frac{1}{4}$) to three-eighths ($\frac{3}{8}$) inch.

~~(16)~~ (16) "Noncommunity public water supply system" or "NCPWSS" means a public water system that serves at least fifteen (15) service connections used by nonresidents or regularly serves twenty-five (25) or more nonresident individuals daily for at least sixty (60) days per year.

~~(17)~~ (17) "Nontransient noncommunity public water supply system" means a noncommunity public water supply system that

~~(A)~~ serves at least fifteen (15) service connections used by nonresidents; or

~~(B)~~ is not a community water system that regularly serves the same twenty-five (25) or more nonresident individuals daily for persons at least six (6) months per year.

~~(18)~~ (18) "Normal operating pressure" means the water pressure maintained in a system regardless of public service load in the absence of extenuating circumstances.

~~(19)~~ (19) "Peak daily consumer demand" means the flow rate as determined in 327 IAC 8-3.3.

(20) "Pitless adapter" means a device or assembly of parts that will permit water to pass through the wall of the well casing or extension thereof and that provides access to the well and parts of the water system within the well in a manner to prevent the entrance of contaminants into the well and the water produced.

~~(21)~~ (21) "Primary pump" means a pump used to deliver drinking water to a water distribution system.

~~(22)~~ (22) "Production well" or "well" means a well that provides water for human consumption within the applicability of section 2 of this rule.

~~(23)~~ (23) "Professional engineer" means a person who is registered as a professional engineer by the state board of registration for professional engineers under IC 25-31.

~~(24)~~ (24) "Pumping test" means a test that is conducted to determine well performance or aquifer characteristics.

~~(25)~~ (25) "Rated capacity" means the flow rate that a pump is capable of producing at a total dynamic head as determined by the manufacturer of that pump. ~~This~~ The term is usually expressed as a unit of volume produced from a well within a unit of time.

~~(26)~~ (26) "Regulatory flood" has the meaning as set forth in 310 IAC 6-1-3.

(27) "Sanitary setback" means an isolation area.

~~(28)~~ (28) "Schedule 40" refers to the unit of size of standard steel pipe. Standard pipe sizes are designated by the nominal size and schedule number. The schedule numbers are related to the permissible operating pressure of the pipe and to the allowable stress of the steel of the pipe. The range of schedule numbers is from ten (10) to one hundred sixty (160) with the higher numbers indicating a heavier wall thickness. Since all schedules of pipe of a given nominal size have the same outside diameter, the higher schedules have a smaller inside diameter.

(29) "Small transient noncommunity public water system" means a public water system that meets the definition of a transient noncommunity public water system under 327 IAC 8-2-1 and serves two hundred fifty (250) or fewer individuals per day.

~~(30)~~ (30) "Specific capacity" means the rate of discharge of a production well per unit of drawdown. ~~This~~ The term is commonly expressed as a unit of volume produced from a well within a unit of time per length or depth of drawdown.

~~(31)~~ (31) "Static water level" means the level of water (including

seasonal fluctuations) in the production well that is not influenced by pumping.

~~(28)~~ (32) "Test well" means a well that is installed to:

(A) obtain hydrogeological information; or to

(B) monitor the quality or quantity of ground water.

~~(29)~~ (33) "Unconsolidated formations" means geologic materials overlying bedrock, such as sand, gravel, and clay.

~~(30)~~ (34) "Usable capacity" means the volume of water available in a hydropneumatic or other tank as measured from the pump shut-off pressure to the pump starting pressure.

(35) "Water distribution system" means that part of the public water system in which water is conveyed from the water treatment plant to the premises of the consumer.

*This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this publication may be obtained from American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (Water Pollution Control Board; 327 IAC 8-3.4-1; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3366; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 25. 327 IAC 8-3.4-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-2 Applicability

Authority: IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. The technical standards established in this rule are applicable to the design and construction of new or modified public water supply system production wells constructed in Indiana as specified in 327 IAC 8-3 and to the applications, plans, and specifications of those water wells that are reviewed by the commissioner. (Water Pollution Control Board; 327 IAC 8-3.4-2; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3368; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 26. 327 IAC 8-3.4-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-3 Certification

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-31-14-19

Sec. 3. (a) A professional engineer must certify that the well design as shown on an application, plans, and specifications for a public water supply system well is in compliance with this rule **except as provided in subsection (b).**

(b) For a well design at small transient noncommunity water systems that are not subject to subsection (c), the well design as shown on an application, plans, and specifications for a public water system well may be certified by any of the following:

(1) A professional engineer.

(2) A licensed well driller.

(3) A licensed professional geologist.

(c) As required under IC 25-31-14-19(a), a well design on projects for a county, city, town, township, school corporation, or

other political subdivision must have a professional engineer certify that the well design as shown on an application, plans, and specifications for a public water system well is in compliance with the rule. (Water Pollution Control Board; 327 IAC 8-3.4-3; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3368; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 27. 327 IAC 8-3.4-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-4 Required information regarding the location of a proposed production well

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-31-14-19

Sec. 4. (a) Two (2) copies of the following information shall be provided with each application for a proposed production well or for the conversion of an existing well to a production well:

(1) A description of the purpose of the proposed well, including the following:

(A) The anticipated well yield.

(B) The anticipated system demand.

(2) The following, as applicable, to demonstrate ownership or control of the ~~isolation area~~ **sanitary setback** of the proposed well:

(A) A copy of a recorded deed or easement.

(B) A certified statement attesting to the ownership or control of the ~~isolation area~~ **sanitary setback** of the proposed well.

(3) The rated capacity of the existing well or wells if the proposed well is in an existing well field.

(4) The number of wells proposed for construction in the application.

(5) The highest flood elevation on record with the Indiana department of natural resources in the proposed ~~isolation area~~ **sanitary setback**, as determined in section 9 of this rule, if any part of the ~~isolation area~~ **sanitary setback** is in an area identified by the Federal Emergency Management Agency (FEMA) as a flood hazard.

(b) The following two (2) types of public water supply systems shall submit an application, for a new production well, that provides the information as specified:

(1) A CPWSS subject to this rule shall submit two (2) copies of the following:

(A) The information required by 327 IAC 8-4.1-13.

(B) Driving directions to the well site.

(2) A NCPWSS subject to this rule shall submit two (2) copies of the following:

(A) A detailed map, drawn to a scale, showing the following:

(i) The proposed well site with ownership or easement boundaries.

(ii) The location of the proposed well.

(iii) The standard ~~isolation area~~ **sanitary setback** in accordance with section 9 of this rule.

(iv) The results of a visual survey showing all sources of contamination within a radius of one thousand (1,000) feet.

(B) The United States Geological Survey (USGS) quadrangle name for the proposed production well site.

(C) A summary of geologic and ground water quality information, where available, for the aquifer system utilized by a proposed well.

(D) Driving directions to the production well site.

(c) The plans required to be submitted with an application for a construction permit specified in 327 IAC 8-3-3 shall be submitted in

duplicate and include plans of the proposed well site in accordance with the following:

(1) Each sheet of the plans must bear a dated signature and seal of a professional engineer or, in the case of a small transient noncommunity public water system:

- (A) a dated signature and seal of a professional engineer;
- (B) a dated signature and license number of a licensed well driller; or
- (C) a dated signature and license number of a licensed professional geologist.

Where a professional engineer is required under IC 25-31-14-19(a), each sheet of the plans at a small transient noncommunity public water system must bear a dated signature and seal of a professional engineer.

(2) Include the entire ~~isolation area~~, sanitary setback, as described in section 9 of this rule, or the area within a one hundred (100) foot radius from the proposed well casing, whichever is greater, along with a description specifying the following:

- (A) The finished grade that will prevent surface water ponding near the well location.
- (B) The highest flood elevation on record with the Indiana department of natural resources in the proposed ~~isolation area~~ sanitary setback if any part of the ~~isolation area~~ sanitary setback is in an area identified by the FEMA as a flood hazard.
- (C) The location of the following existing or proposed facilities:
 - (i) Wells.
 - (ii) Roads and buildings.
 - (iii) Discharge piping.
 - (iv) Raw water transmission main.
 - (v) Sanitary sewers, storm sewers, manholes, and culverts.
 - (vi) Septic or sewage treatment equipment, including absorption field trenches.
 - (vii) Aboveground storage tanks, underground storage tanks, and the distribution device serving a tank of either type.
 - (viii) Surface waterbodies.
 - (ix) A potential source of contamination not described in this clause.

(3) If an existing or proposed facility listed in subdivision (2)(C) is not present in the ~~isolation area~~, sanitary setback, the application for a construction permit shall specify that fact.

(Water Pollution Control Board; 327 IAC 8-3.4-4; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3368; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 28. 327 IAC 8-3.4-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-8 Production well materials

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 8. (a) A direct or indirect additive used with or in a production well must be in accordance with 327 IAC 8-1.

(b) An indirect additive in a production well shall be certified for conformance to American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 61; Drinking Water System Components-Health Effects; with the exception of Section 9; Mechanical Plumbing Product (November 13, 1997)*.

(c) The certification requirement of subsection (b); that an indirect additive is in accordance with this rule; shall be satisfied if the indirect additive is listed with certification in one (1) of the following publica-

tions:

(1) "NSF Listings, Drinking Water Additives-Health Effects" (November 13, 1997)*.

(2) "Classified or Recognized Drinking Water System Components, Component Materials and Treatment Additives Directory" (December 1997)**.

(d) The commissioner may approve the use of an indirect additive in a production well only after the applicant has demonstrated that the indirect additive is in compliance with the following:

(1) The indirect additive has been approved and is listed by one (1) of the publications specified by subsection (c):

(2) The indirect additive has been approved by an organization having a third party certification program for indirect additives that has been approved by the American National Standards Institute:

(c) (b) A lead packer shall not be used in a production well.

(f) (c) A public water supply system shall not introduce, permit, or allow the introduction of a material into the drinking water that does not meet the requirements of this rule or 327 IAC 8-1.

*These documents are incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this publication may be obtained from NSF International, 3475 Plymouth Road, Ann Arbor, Michigan 48113-0140 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.

**This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this publication may be obtained from Underwriters Laboratory, Inc., Engineering Services, 416C, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206; (Water Pollution Control Board; 327 IAC 8-3.4-8; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3370; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 29. 327 IAC 8-3.4-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-9 Separation of a production well from a potential or existing source of microbiological or chemical contamination or damage

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 15-3-3.5; IC 15-3-3.6

Sec. 9. A public water supply system shall comply with the following provisions for the separation of a production well from a potential or existing source of contamination or damage, except replacement wells as allowed under section 9.1 of this rule:

(1) The ~~isolation area~~ sanitary setback from a potential or existing source of contamination for the construction of a public water system production well is the circular area within a radius as stated in the following table:

Table 9-1

Isolation Sanitary Setback Radius Provisions (Linear Feet Measured from the Outside Edge of the Well Casing)

Public Water System Type	Standard Isolation Sanitary Setback Radius	Well Subjected to Automatic Disinfection*	Favorable Hydrogeologic Conditions are Present**
Community	200	100	100
Noncommunity greater than or equal to 70 gpm***	200	100	100
Noncommunity, Susceptible Populations****	200	100	100
Noncommunity, Nonsusceptible, less than 70 gpm***	100	100	100

*Automatic disinfection as described in subdivision (2).

**Favorable hydrogeologic conditions as described in subdivision (3).

***70 gallons per minute (gpm) as measured per pump (rated capacity).

****Schools, correctional facilities, health care facilities, and agricultural labor camps.

(2) The radius creating the ~~isolation area sanitary setback~~ shall be one hundred (100) feet for a well that will be subject to automatic disinfection treatment ~~meeting the provisions of 327 IAC 8-2-8.6~~ prior to before entering the water distribution system. **To meet this provision at systems using chlorine or chlorine dioxide, the free chlorine residual disinfectant concentration in the water entering the water distribution system cannot be less than two-tenths (0.2) milligrams per liter (mg/l) for more than four (4) hours, and the residual disinfectant level in the water distribution system cannot be undetectable in more than five percent (5%) of the samples collected each month in accordance with 327 IAC 8-2.5-6(c). Systems using disinfectants other than chlorine or chlorine dioxide must maintain an equivalent level of disinfection as determined by the commissioner.**

(3) A determination of favorable hydrogeological conditions may be approved by the commissioner after the submission of a report that is signed, dated, and sealed by a ~~certified licensed~~ professional geologist or other person legally authorized to perform geological services or a professional engineer who applies geology to the practice of engineering. The report must include the following information:

(A) The thickness, vertical permeability, and spatial continuity of a protective layer or layers overlying the production aquifer.

(B) The local and regional geologic conditions of the well site area.

(C) The relative susceptibility to contamination of the proposed production aquifer.

(4) A well discharging into the inlet side of a surface water treatment process plant that meets the requirements of 327 IAC 8-2-8.5, ~~and 327 IAC 8-2-8.6, and 327 IAC 8-2.6~~ shall not be held to ~~an isolation area a sanitary setback~~ requirement.

(5) The ~~isolation area sanitary setback~~ shall be subject to the following additional requirements:

(A) The separation distance between two (2) or more wells of a public water ~~supply~~ system shall be maintained in accordance with the following:

(i) A production well with a pumping capacity of less than seventy (70) gallons per minute (GPM) shall not be located closer than fifty (50) feet from another production well.

(ii) A production well with a pumping capacity of greater than or equal to seventy (70) GPM shall not be located closer than one hundred (100) feet from another production well.

(iii) A public water ~~supply~~ system drinking water well that is a part of a transient noncommunity public water ~~supply~~ system ~~that is not a nontransient noncommunity public water supply system~~ shall not be closer than fifty (50) feet, regardless of the capacity of pumping equipment, from another well in the system.

(B) A storm or sanitary sewer shall not be located within the ~~isolation area sanitary setback~~ of a production well unless the storm or sanitary sewer is:

- (i) more than fifty (50) feet, as measured from all directions, from a public water ~~supply~~ system production well; and
- (ii) constructed in accordance with 327 IAC 8-3.2-8, 327 IAC 8-3.2-17(a), and 327 IAC 8-3.2-17(b).

(C) The ~~standard isolation area sanitary setback~~ for a public water ~~supply~~ system production well shall conform to the following requirements concerning transportation routes:

(i) Roadways, paved surfaces, and parking areas for service vehicles that:

- (AA) service the proposed well, pump, and appurtenances;
- (BB) are owned or controlled by the public water ~~supply~~ system; and
- (CC) are restricted from access by the public;

shall not be held to ~~an isolation area a sanitary setback~~ requirement.

(ii) Roadways, paved surfaces, and parking areas that are part of the following shall not be located within fifty (50) feet of a well:

- (AA) Residential subdivisions.
- (BB) Apartment communities.
- (CC) Mobile home parks.
- (DD) Recreational parks.

(iii) A transportation route, such as a railway, roadway, paved area, or parking area, including paved or unpaved roadway or surface areas, that is:

- (AA) accessible in full or in part for commercial or industrial transportation activities; or
- (BB) listed as a hazardous material route;

shall not be located within the ~~standard isolation area sanitary setback~~ as measured from the outside edge of the well casing to the traveled portion of the transportation route.

(D) The distance between the location of a public water ~~supply~~ system production well casing and a surface water body, such as:

- (i) a stream;
- (ii) a pond;
- (iii) a lake;
- (iv) a river;
- (v) an impoundment; or
- (vi) a drainage ditch;

shall be a minimum of twenty-five (25) feet.

(6) The commissioner may modify the requirements of ~~an isolation area a sanitary setback, control area~~, or a separation distance to an alternative area or distance so long as the alternative area or distance shall be able to provide the same factor of safety for filtering pathogenic contaminants as the ~~standard isolation area sanitary setback~~ or separation distance. The commissioner's decision to

allow an alternative ~~isolation area~~ **sanitary setback** or separation distance shall be based on the following conditions:

(A) The applicant's submission of a report describing the following:

- (i) Treatment processes.
- (ii) Geologic features.
- (iii) Additional ~~raw~~ water monitoring provisions. ~~or~~
- (iv) Other means of providing pathogenic contaminant filtration.
- (v) **Other means of mitigating contaminant sources relative to the location of the well.**

(B) The report required by clause (A) must:

- (i) be signed and sealed by a professional engineer, **licensed well driller, or certified licensed** professional geologist; or
- (ii) cite the applicable provisions of 327 IAC 8-4.1.

(7) A supplier of water to a public water system shall own or control the ~~isolation area~~ **sanitary setback** by recorded deed, easement, or long term lease. **A small transient noncommunity public water system shall own or control a fifty (50) foot sanitary setback by recorded deed, easement, or long term lease.**

(8) The use, application, storage, mixing, loading, and transportation of pesticides in accordance with IC 15-3-3.5, IC 15-3-3.6, and the rules and guidance thereunder, developed by the **Indiana** pesticide review board and the office of the Indiana state chemist, may occur within the ~~standard isolation area~~ **sanitary setback** if the following requirements are met by the public water system:

(A) The production well casing is constructed of steel in accordance with section 16 of this rule.

(B) The product is stored within a containment system:

- (i) designed;
- (ii) constructed;
- (iii) operated; and
- (iv) maintained;

to contain spills or leaks.

(9) Water treatment chemicals and fuels for water production equipment containing contaminants that are not registered pesticides regulated under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as amended August 6, 1996* may be used, stored, mixed, loaded, and transported within the ~~standard isolation area~~ **sanitary setback** if the following conditions are met:

(A) The production well casing is constructed of steel in accordance with section 16 of this rule.

(B) The product is stored:

- (i) within a containment system designed, constructed, operated, and maintained to contain spills or leaks; **and**

~~(C) The product is stored~~ (ii) in an underground or aboveground storage tank that is in conformance with applicable federal, state, and local laws and regulations.

*The federal Safe Drinking Water Act is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-3.4-9; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3371; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 30. 327 IAC 8-3.4-9.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-3.4-9.1 Sanitary setback requirements for replacement wells at noncommunity public water systems

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 9.1. All replacement wells at noncommunity public water systems shall be located as far as practicable from all potential contaminant sources on property that the public water system already owns or controls if the provisions of section 9(1) through 9(5) of this rule cannot be met. (*Water Pollution Control Board; 327 IAC 8-3.4-9.1*)

SECTION 31. 327 IAC 8-3.4-12 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-12 Flow rate and pressure requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 12. (a) The normal operating pressure in the ~~water~~ **water** distribution system of a noncommunity public water ~~supply~~ system shall meet the following conditions:

(1) Be a minimum of thirty-five (35) pounds per square inch (psi) at ground level for a flow rate equal to the average daily consumer demand as determined in 327 IAC 8-3.3-2.

(2) Be at least twenty (20) psi under all conditions of flow in the **water** distribution system and at ground level for a flow rate equal to the peak daily consumer demand as determined in 327 IAC 8-3.3-2.

(b) Flow rate and pressure requirements for a community public water ~~supply~~ system shall be in accordance with the requirements of 327 IAC 8-3.2-11. (*Water Pollution Control Board; 327 IAC 8-3.4-12; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3373; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 32. 327 IAC 8-3.4-13 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-13 Backup provisions for production wells

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 13. (a) The following backup provisions shall apply to both a community public water ~~supply~~ system and a noncommunity public water ~~supply~~ system having a pumping capacity greater than or equal to seventy (70) gallons per minute:

(1) The backup provisions shall be designed to provide system conformance with section 12 of this rule when the largest pump is out of service.

(2) A system shall have one (1) or more backup wells designed to provide system conformance with section 12 of this rule.

(b) Schools, correctional facilities, health care facilities, and agricultural labor camps, regardless of pumping capacity, must comply with the requirements of subsection (a). (*Water Pollution Control Board; 327 IAC 8-3.4-13; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3373; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 33. 327 IAC 8-3.4-14 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-14 Hydropneumatic storage tanks

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 22-12

Sec. 14. (a) A hydropneumatic storage tank shall abide by the following:

- (1) The requirements of IC 22-12 and 680 IAC.
- (2) Shall not be buried except when in accordance with subdivisions (3) and (4).
- (3) A tank shall be protected from freezing and flooding.
- (4) Provide housing as follows:
 - (A) A hydropneumatic storage tank with an air-water diaphragm separator shall be within **the** housing.
 - (B) Hydropneumatic storage tanks without an air-water separator shall have all nontank mechanical parts, including valves, piping, and components, within **the** housing.
- (5) Be equipped to provide the following:
 - (A) The ability to isolate the tank from the rest of the public water system.
 - (B) A drain.
 - (C) Control equipment consisting of the following:
 - (i) A pressure gauge.
 - (ii) Pressure relief valve.
 - (iii) Air addition as follows:
 - (AA) Manual air addition may suffice for a hydropneumatic storage tank with an air-water diaphragm separator.
 - (BB) Equipment for automatic air addition shall be required for all other hydropneumatic storage tanks.
 - (iv) Start and stop controls for the pumps.

(b) The usable capacity of a hydropneumatic storage tank must **meet one (1) of the following:**

- (1) Be a minimum of three (3) times the installed rated capacity, in gallons per minute, of the primary pump, or pumps if more than one (1) pump is used to meet peak system demand, at an operating pressure of at least thirty-five (35) pounds per square inch.
- (2) **Be based on the manufacturer's pump specifications.**
- (3) **Meet an alternative criteria approved by the commissioner.**

(c) Unless required by IC 22-12 or 680 IAC to be certified by ASME, a hydropneumatic storage tank shall be certified by ANSI, ASME, NSF, or UL. The applicant must submit information showing that the tank used is properly certified.

~~(d)~~ (d) Hydropneumatic tank storage of water shall not be designated for fire protection purposes.

~~(e)~~ (e) A hydropneumatic tank shall not be used in a community public water ~~supply~~ system when more than four hundred (400) persons are served.

(f) If more than one (1) hydropneumatic tank is used in series, each tank must:

- (1) be able to be hydraulically isolated from the others using valves or similar devices;**
- (2) have sampling taps for performing water quality sampling; and**
- (3) be operated and maintained to ensure adequate water turnover.**

(Water Pollution Control Board; 327 IAC 8-3.4-14; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3373; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 34. 327 IAC 8-3.4-16 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-16 Casing and screen requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 16. (a) A drinking water production well casing shall meet the following requirements:

- (1) A steel or stainless steel casing is required for the following:
 - (A) A community public water ~~supply~~ system.
 - (B) A public water ~~supply~~ system production well casing with an inside diameter greater than six (6) inches.
- (2) Steel or stainless steel shall meet the following:
 - (A) Schedule 40 if the casing is less than or equal to ten (10) inches in diameter.
 - (B) Be at least three hundred seventy-five thousandths (0.375) of an inch in thickness if the casing is greater than ten (10) inches in diameter.
- (3) Steel or stainless steel pipe used in a well casing shall be joined by:
 - (A) threading and the use of screwed couplings; or
 - (B) welding with full circumference welds.
- (4) A production well not regulated under subdivision (1) may be equipped with a polyvinyl chloride (PVC) well casing when all of the following are met:
 - (A) The production well is not located within two hundred (200) feet of stored or staged petroleum products or any known sources of volatile or semivolatile organic contaminants.
 - (B) The PVC casing is joined by solvent welding or mechanical joints that use PVC locking strips and synthetic watertight sealing gaskets.
 - (C) The PVC well casing and joints meet the requirements of ANSI/ASTM ~~F480-94~~ **F480-02 "Standard Specifications for Thermoplastic Water Well Casing Pipe and Couplings made in Standard Dimension Ratios (SDR) (Annual Book of ASTM Standards, March 1994)*: SCH 40 and SCH 80"**.
 - (D) The minimum wall thickness of PVC casing is at least the equivalent of SDR 21 according to ANSI/ASTM ~~F480-94~~ **F480-02 for "Standard Specifications for Thermoplastic Water Well Casing Pipe and Couplings made in Standard Dimension Ratios (SDR) (Annual Book of ASTM Standards, March 1994)*: SCH 40 and SCH 80"**.
 - (E) PVC casing shall be protected from damage from collision in accordance with the following:
 - (i) Three (3) posts shall be placed in an equilateral formation no more than twenty-four (24) inches in radius from the outside edge of the casing.
 - (ii) The posts specified in item (i) shall:
 - (AA) be concrete-filled steel posts at least four (4) inches in diameter or hollow steel at least twenty-five hundredths (0.25) of an inch in thickness; and**
 - ~~(iii) The posts specified in item (i) shall~~ **(BB) extend at least three (3) feet above grade and four (4) feet below grade.**
- (5) A permanent well casing shall terminate as follows:
 - (A) At the higher level of one (1) of the following:
 - (i) At least eighteen (18) inches above finished grade.
 - (ii) At least thirty-six (36) inches above the regulatory flood elevation if located in a designated flood hazard area identified by the Federal Emergency Management Agency (FEMA).
 - (B) At least twelve (12) inches above the pump house floor or concrete apron.

(b) The casing shall be vented to the atmosphere with a vent that terminates in a downturned position at or above the top of the casing

or the pitless adapter unit. The vent shall have a minimum one and one-half (1½) inch diameter opening covered with a twenty-four (24) mesh, noncorrodible screen.

(c) A production well shall meet the following construction requirements:

- (1) Have a maximum deviation from plumb not in excess of two-thirds (⅔) of the inside diameter of the well casing per one hundred (100) feet of well depth.
- (2) Be aligned to permit proper operation of the type of permanent pump intended for the well. Alignment shall be tested as follows:
 - (A) By lowering into the well, through its entire depth, a section of pipe forty (40) feet long or a dummy of the same length.
 - (B) The pipe or dummy used as specified by clause (A) shall be in accordance with the following:
 - (i) One-half (½) inch less in diameter than the inside diameter of the part of the casing or hole being tested when the casing or hole diameter is ten (10) inches or less.
 - (ii) One (1) inch smaller than the inside diameter when that part of the casing or hole being tested is greater than ten (10) inches.
 - (C) An alignment test shall not be required inside well screens.

(d) A production well completed in an unconsolidated formation shall have screens installed and constructed of one (1) of the following materials:

- (1) Stainless steel.
- (2) PVC only if the casing material is also PVC.

(e) A production well casing shall be fitted to permit measurements of static and pumping water levels.

(f) A production well in an unconsolidated formation shall be packed with silica gravel if it has artificial gravel wall filters.

(g) The well house floor shall be at least six (6) inches above grade.

*This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this ~~publication~~ **standard** may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103 or from the Indiana Department of Environmental Management, Office of Water ~~Management~~ **Quality**, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-3.4-16; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3374; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 35. 327 IAC 8-3.4-17 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-17 Pitless adapter unit requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 17. A production water well equipped with a pitless unit shall meet the following requirements:

- (1) A pitless unit shall be constructed of steel, ~~or~~ stainless steel, **or other material compatible with the casing as approved by the commissioner**, unless the well casing is constructed of PVC in accordance with section 16 of this rule.

(2) A pitless unit shall be installed on the well casing using one (1) of the following types of joints:

- (A) Welded, **with either mechanical or chemical weld.**
- (B) Flanged.
- (C) Threaded.

(3) The discharge connection of a pitless unit shall be pressurized at all times.

(4) A pitless unit shall be designed so that the pump can be removed for servicing and maintenance without disturbing the underground discharge piping.

(5) A pitless unit shall have an inside diameter greater than or equal to the casing diameter if the casing diameter is less than twelve (12) inches.

(6) At least one (1) check valve shall be installed inside the well casing if a submersible pump is used.

(7) A compression joint shall not be used for the installation of a pitless unit.

(8) A buried suction line is not permitted.

(9) A saddle-type pitless adapter is not permitted **except at systems with a well casing and a diameter of six (6) inches or less. At these systems, a saddle-type pitless adapter may be used if:**

- (A) **it maintains positive pressure;**
- (B) **the pitless adapter is designed to support the weight of the column and pump; and**
- (C) **the pump is accessible.**

(*Water Pollution Control Board; 327 IAC 8-3.4-17; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3375; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 36. 327 IAC 8-3.4-23 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-23 Grouting requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 23. This section governs grouting materials and the installation of grouting materials **as follows:**

(1) Grouting materials shall consist of the following:

- (A) Neat cement grout shall consist of cement conforming to ASTM ~~C150 (1996 Annual Book of ASTM Standards)~~ **C150-04 Standard Specification for Portland Cement*** and contain at least two percent (2%) but ~~no not~~ more than five percent (5%) by weight of bentonite additive.
- (B) Bentonite slurry that can include polymers designed to retard swelling.
- (C) Pelletized, granular, medium-grade, or coarse-grade crushed bentonite.
- (D) Concrete grout shall consist of equal amounts of:
 - (i) cement, conforming to AWWA ~~A100-90; Section 7 (effective February 1, 1991)**;~~ **A100-97 AWWA Standard for Water Wells****; and
 - (ii) sand mixed with the addition of water to make a mixture not exceeding six (6) gallons of water per one (1) cubic foot of cement; and contain at least two percent (2%) but ~~no not~~ more than five percent (5%) by weight of bentonite additive.

(2) The installation of grouting materials shall be in accordance with the following:

- (A) Except as provided in section 21(2) of this rule, neat cement and bentonite slurry shall be pressure pumped into place with a grout pipe from the bottom of the annular space upward in a continuous operation.
- (B) Pelletized, granular, medium-grade, or coarse-grade crushed

bentonite shall be introduced in a manner to prevent bridging of the borehole annulus.

(C) Concrete grout shall be installed according to one (1) of the following:

- (i) Pressure pumped.
- (ii) Placed by gravity through a grout pipe from the bottom of the annular space upward in a continuous operation.
- (iii) Introduced in a manner to prevent bridging of the borehole annulus.

(3) The annulus of a well shall be grouted with one (1) of the types of grout as specified in subdivision (1) and in accordance with the applicable grout installation methods specified in subdivision (2), with the exception of a prohibition against using the method named in subdivision (2)(C)(iii) if:

- (A) the diameter of the borehole is eight (8) inches or larger than the outside diameter of the well casing; and
- (B) the well is equal to or less than one hundred (100) feet in depth.

(4) The annulus of a well shall be pressure grouted with neat cement, concrete grout, or a bentonite slurry if:

- (A) the diameter of the borehole is less than eight (8) inches larger than the outside diameter of the well casing; or
- (B) the well is greater than one hundred (100) feet in depth.

(5) The annulus of a well may be grouted, with concrete grout containing gravel not larger than one-half (½) inch in size, by using gravity without the use of a grout pipe if:

- (A) the diameter of the borehole is greater than twelve (12) inches larger than the outside diameter of the well casing; and
- (B) the depth to be grouted is equal to or less than ten (10) feet.

(6) Grouting of the borehole annulus shall be accomplished upon the earlier of the following events:

- (A) Within twenty-four (24) hours following the installation of the well casing.
- (B) The removal of drilling equipment from the proposed well location.

(7) All work on the well shall cease during the grout setup time as specified by the grout material supplier.

*This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this **publication standard** may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.

This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of the primarily incorporated document. Copies of this **publication standard may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235 or from the Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-3.4-23; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3376; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 37. 327 IAC 8-3.4-24 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-24 Disinfection procedure requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 24. (a) The disinfection procedures described in this section shall be performed with one (1) of the following approved forms of chlorine:

- (1) Calcium hypochlorite.
- (2) Sodium hypochlorite.

(b) Gravel installed in a new production well must be chlorinated by use of the following method:

- (1) Silica gravel for gravel pack shall be disinfected with calcium hypochlorite or sodium hypochlorite **prior to before** installation in a well at a rate that will produce a liquid concentration of at least fifty (50) milligrams per liter (mg/l) as the gravel is installed.
- (2) The gravel, disinfected according to subdivision (1), shall be fed into a gravel chute or tremie to completely fill the annular void outside the well casing to the top gravel pack level.
- (3) Chlorine shall be added to the well, following the activity described in subdivision (2), and circulated until a chlorine concentration of not less than fifty (50) mg/l in the entire volume of fluid is achieved.

(c) Immediately before placement in the void caused by settled gravel in a well, replacement gravel shall be soaked in a chlorine solution of at least fifty (50) mg/l for a duration not less than thirty (30) minutes during initial construction or subsequent repairs.

(d) Permanent equipment and material used in a production well shall be chlorinated **prior to before** installation by spraying exposed areas with a solution containing a chlorine residual of **no not** less than two hundred (200) **milligrams per liter** mg/l.

(e) A new or modified well proposed to be a production well shall be chlorinated in accordance with one (1) of the following:

(1) The water in the well casing shall be treated for disinfection as follows:

- (A) To create a chlorine residual of one hundred (100) **milligrams per liter** mg/l to the entire volume of water in the casing, well screen, and rock hole, if present.
- (B) The well must be:
 - (i) chlorinated using the compound requirements in Table 24-1; **and**
 - ~~(C) The well must be~~ (ii) surged at least three (3) times following chlorination.

~~(D) (C)~~ (C) The chlorinated water must remain in the well casing at least twelve (12) hours following the surging activity of clause ~~(C)~~ (B)(ii).

(2) The water in the well casing shall be treated for disinfection as follows:

- (A) To create a chlorine residual of fifty (50) mg/l to the entire volume of water in the casing, well screen, and rock hole, if present.
- (B) The well must be:
 - (i) chlorinated using the compound requirements in Table 24-1; **and**
 - ~~(C) The well must be~~ (ii) surged at least three (3) times following chlorination.

~~(D) (C)~~ (C) The chlorinated water must then remain in the well casing at least twenty-four (24) hours following the surging activity of clause ~~(C)~~ (B)(ii).

Table 24-1

Well-Hole or Well-Casing Diameter (in.)	Amount of Chemical Compound		
	Volume per 100 Feet of Water Depth (gal)	Calcium Hypochlorite* (65 per- cent available Cl ₂)	Sodium Hypochlorite† (12 trade percent‡)
5	106.09	1.1 oz	5.65 fl oz
6	146.9	1.5 oz	7.8 fl oz
8	261.1	2.7 oz	13.9 fl oz
10	408.0	4.2 oz	1.4 pt
12	587.5	6.0 oz	2.0 pt
16	1,044.0	10.7 oz	3.5 pt
20	1,632.0	1 lb 1 oz	0.7 gal
24	2,350.0	1 lb 8 oz	1.0 gal
30	3,672.0	2 lb 6 oz	1.5 gal
36	5,287.0	3 lb 6 oz	2.2 gal
48	9,400.0	6 lb 1 oz	3.9 gal
60	11,690.0	9 lb 7 oz	6.1 gal

Notes:

*Quantities of Ca (OCl)₂ based on 65 percent available chlorine by dry weight (16 oz = 1 lb).

†Quantities of NaOCl based on 12 trade percent available chlorine by US liquid measure (1 gal = 4 qt = 8 pt = 128 fl oz).

‡Trade percent is a term used by chlorine manufacturers; trade percent × 10 = grams of available chlorine in 1 liter of solution.

(f) After disinfection accomplished in accordance with subsection (e), a new or modified public water supply system production well and a flowing well shall be sampled for the presence of coliform at least twice, with sampling done ~~no not~~ less than twenty-four (24) hours apart, by a laboratory certified by the Indiana state department of health **or the United States Environmental Protection Agency using methods specified in 327 IAC 8-2-8.7.** If the presence of coliform is indicated by the sample results, the disinfection of the well shall be repeated.

(g) Disposal of chlorinated water from well disinfection shall be to one (1) of the following sources:

- (1) A sanitary sewer with the approval of the local sewer authority.
- (2) A location other than a sanitary sewer in accordance with local, state, and federal regulations.

(Water Pollution Control Board; 327 IAC 8-3.4-24; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3377; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 38. 327 IAC 8-3.4-25 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-25 Postconstruction testing and reporting requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 13-18-16-2

Sec. 25. (a) The following information must be submitted to the commissioner before a new or modified production well is placed into production:

- (1) Results of a production well performance test (PWPT) that was performed for a period of at least twenty-four (24) hours for a community public water supply system and ~~at least eight (8) hours for a nontransient noncommunity public water supply system serving more than two hundred fifty (250) individuals.~~ The PWPT information submitted to the commissioner shall include the following:

- (A) Pumping rate of test (at least one (1) times the maximum daily pumping rate).

(B) Static water level (stable before pumping).

(C) Water level at:

- (i) start up and at interim readings; and

~~(D) Water level at~~ (ii) the end of the PWPT.

~~(E) (D)~~ Specific capacity at the end of the PWPT.

(2) Every well shall be tested for specific capacity of the well. The well shall be test pumped at a capacity at least equal to the pumping rate desired from the well during normal usage.

~~(2) (3)~~ A copy of the Indiana department of natural resources' record of water well completed in accordance with the requirements of ~~327 IAC 16-2-6~~ **312 IAC 13-2-6.**

~~(3) (4)~~ The results of:

- (A) water quality samples obtained during test pumping; and

~~(4) The results of (B)~~ disinfection confirmation samples obtained during disinfection.

(5) Completed copies of the chemical analytical reports of sampling done and analyzed by a laboratory certified by the Indiana department of health **or the United States Environmental Protection Agency using methods set forth in 327 IAC 8-2-4.2** for the following constituents:

- (A) Nitrate (NO₃).
- (B) Fluoride.

(b) The commissioner may modify or revoke a construction permit based on the information submitted under subsection (a) in accordance with IC 13-18-16-2. (Water Pollution Control Board; 327 IAC 8-3.4-25; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3378; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 39. 327 IAC 8-3.4-27 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-27 Alternative to technical standards

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 27. (a) An alternative to a technical standard required by this rule may be approved by the commissioner for either a single application or for a public water supply system system-wide application if the

applicant demonstrates, in a written submission, that the alternative will meet the following:

- (1) The requirements of 327 IAC 8-3-4.
- (2) Provide drinking water of at least the same quality and normal operating pressure at the peak flow rate as the technical standards in this rule would provide.

(b) An alternative to a technical standard required by this rule may be approved by the commissioner for all public water systems or a subset of public water systems if the alternative will meet the following:

- (1) The requirements of 327 IAC 8-3-4.**
- (2) Provide drinking water of at least the same quality and normal operating pressure at the peak flow rate as the technical standards in this rule would provide.**

(c) Continuing operation of the approved alternative technical standard shall require no renewal if the alternative technical standard is operated in the manner approved by the commissioner.

(d) An alternative to a technical standard approved under subsection (a) shall only apply to the application or the public water supply system for which the alternative is requested. (*Water Pollution Control Board; 327 IAC 8-3.4-27; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3379; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 40. 327 IAC 8-3.5-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.5-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 1. In addition to the definitions contained in 327 IAC 8-3-1, the following definitions apply throughout this rule:

- (1) "Alternative technical standard" means alternative technical standards as described in 327 IAC 8-3.2-20.
- (2) "Average daily customer demand" means the average daily customer demand as determined in accordance with 327 IAC 8-3.3-2.
- (3) "Entry point of the distribution system" means one (1) of the following points:

(A) For public water systems that utilize water treatment facilities, the point at which the drinking water has left the treatment facilities and has entered the distribution system:

(B) For public water systems that do not utilize water treatment facilities, the point at which the drinking water has left the supply facilities and has entered the distribution system:

- (4) (3) "General construction permit ban" means a decision issued in conformance with section 8 of this rule.
- (5) (4) "Notice of intent letter" or "NOI" means a written notification indicating a responsible person has elected to comply with the terms of this general construction permit rule in lieu instead of applying for an individual construction permit.
- (6) (5) "Peaking factor" means the peak daily customer demand factor as determined in accordance with 327 IAC 8-3.3-2.
- (7) "Public water system" means a public water supply for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system; and used

primarily in connection with such system and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.

(8) (6) "Public water system's daily capacity" means the public water system's daily capacity as determined in accordance with 327 IAC 8-3.3-3.

(9) (7) "Responsible person" means a person as described by section 6 of this rule.

(10) "Two (2) year average peak" means the arithmetic mean of the highest five (5) daily pumpages as reported over the previous two (2) year period on the public water system's monthly report of operations on record with the department. If the public water system is less than two (2) years old, the term means the arithmetic mean of the highest five (5) daily pumpages as reported on the public water system's monthly report of operations on record with the department.

(11) "Water main" means any pipe located between all entry points to the distribution system and all customer service connection meters.

(12) (8) "Transmission main" means a any pipe described by any of the following: that:

(A) That transports water from a:

(i) surface water intake to a surface water treatment plant; or

(B) That transports water from a groundwater intake (ii) well to a water treatment plant; (if present);

(C) That (B) transports:

(i) finished water from the treatment plant (if present) to the entry point of to the water distribution system; or

(ii) water from a well to the entry point to the water distribution systems if there is no water treatment plant; or

(D) That (C) is installed for the purpose of interconnecting separate public water systems.

(*Water Pollution Control Board; 327 IAC 8-3.5-1; filed Mar 31, 1999, 10:20 a.m.: 22 IR 2522; errata filed Aug 17, 1999, 3:15 p.m.: 23 IR 25; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1627; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 41. 327 IAC 8-3.5-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.5-2 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18

Sec. 2. (a) The following materials are incorporated by reference into this rule, to the extent provided in other sections of this rule:

- (1) The American Water Works Association C700-02 AWWA Standard C700-90: for Cold-Water Meters - Displacement Type, Bronze Main Case.
- (2) The American Water Works Association C701-02 AWWA Standard C701-88: for Cold-Water Meters - Turbine Type for Customer Service.
- (3) The American Water Works Association C702-01 AWWA Standard C702-92: for Cold-Water Meters - Compound Type.
- (4) The American Water Works Association C703-96(R04) AWWA Standard C703-96: for Cold-Water Meters - Fire Service Type.

(b) The matters incorporated by reference in subsection (a) may be obtained from either of the following:

- (1) American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

(2) Indiana Department of Environmental Management, Office of Water Management, Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-3.5-2; filed Mar 31, 1999, 10:20 a.m.: 22 IR 2522; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 42. 327 IAC 8-3.5-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.5-5 General construction permit conditions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18; IC 13-30

Sec. 5. (a) The proposed water main extension must meet the issuance requirements of 327 IAC 8-3-4.

(b) A copy of the NOI, all documentation supporting the project, plans, and specifications must be submitted to the public water system before the commencement of the water main construction.

(c) All documentation supporting the project must be readily accessible for review and **copy copying** for the duration of water main construction activities. In addition, a copy of the plans conforming to 327 IAC 8-3.2-5(c) and specifications must be available in accordance with the following:

(1) These items shall be on-site and readily accessible for review and **copy copying** throughout the duration of water main construction activities at the site if an office is present at the site.

(2) If there is no office present at the site, these items shall be producible for review and **copy copying** throughout the duration of water main construction activities at the site within sixty (60) minutes upon notification by the commissioner.

(d) Persons in violation of this rule shall take all reasonable steps to correct any adverse impact on the public health resulting from their noncompliance.

(e) Nothing in this rule shall be construed to relieve anyone from any responsibility, liability, or penalty to which they are or may be subject to under the local, state, or federal laws and regulations.

(f) Responsible persons identified by and regulated by this rule shall ensure that the construction to the public water system achieves compliance with the terms and conditions of this rule.

(g) During construction, where the:

(1) public water system;

(2) responsible person; ~~the or~~

(3) responsible person's:

(A) professional engineer; ~~or the responsible person's~~

(B) developer;

(C) resident project representative; or

(D) person who by other means is representing the construction aspects of the proposed project;

becomes aware of a failure to submit any relevant facts or the submittal of incorrect information in a NOI, the responsible person shall promptly submit ~~such the~~ facts or corrected information to the commissioner in writing utilizing certified mail and the address on the NOI form.

(h) The design and construction of the water main must meet all technical standards in 327 IAC 8-3.2, or, if any alternate technical

standards are proposed for the project, the alternate technical standard must be approved by the commissioner in accordance with 327 IAC 8-3.2-20, and a copy of this approval must be submitted with the NOI.

(i) All nonresidential service connections must be equipped with a meter, and the size of the meter must be specified on the plans and specification of the water main. The metering devices must not be capable of exceeding the corresponding "Safe Maximum Operating Capacity" as specified on Table 1 of AWWA ~~E700-90~~ **C700-02**, AWWA ~~E701-88~~ **C701-02**, AWWA ~~E702-92~~ **C702-01**, or AWWA ~~E703-96~~ **C703-96(04)**.

(j) At a peak flow rate equal to the peak daily customer demand as determined in subsection (k), the normal operating pressure in the water main shall not be less than twenty (20) pounds per square inch at the ground level at all points in the water main under all conditions of flow when demonstrated in conformance with subsection (l).

(k) For use in this section, the peak flow rate is equal to the sum of subdivisions (1) and (2) defined as follows:

(1) The fire flow value that is one (1) of the following:

(A) The fire protection flow rate that is provided by the public water system for the entire water main extension.

(B) Zero (0) if the public water system is not providing fire protection.

(2) The peak daily demand for each of the individual service connections defined as follows:

(A) For residential service connections, the peak daily customer demand is determined in accordance with 327 IAC 8-3.3-2(a)(1), or the peak daily customer demand as approved by the commissioner in accordance with 327 IAC 8-3.3-2(a)(4).

(B) For nonresidential service connections with meter sizes less than one (1) inch in diameter, the peak daily customer demand is equal to fifty (50) gallons per minute.

(C) For nonresidential service connections, the peak daily customer demand is equal to the "Safe Maximum Operating Capacity" ~~flowrate~~ as specified on Table 1 of AWWA ~~E700-90~~ **C700-02**, AWWA ~~E701-88~~ **C701-02**, AWWA ~~E702-92~~ **C702-01**, or AWWA ~~E703-96~~ **C703-96(R04)**.

(D) For nonresidential service connections, the peak daily customer demand as approved by the commissioner in accordance with 327 IAC 8-3.3-2(a)(4).

(l) The conformance with subsection (j) must be demonstrated with the use of a computer model or with hydraulic calculations, which must be included with the documentation supporting the project, that are to be readily accessible in accordance with subsection (c) and at the public water system in accordance with subsection (b).

(m) Persons in violation of this rule are subject to enforcement and legal action under IC 13-30. (*Water Pollution Control Board; 327 IAC 8-3.5-5; filed Mar 31, 1999, 10:20 a.m.: 22 IR 2524; errata filed Aug 17, 1999, 3:15 p.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 43. 327 IAC 8-4-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-4-1 Public water system plans; approval by board

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18

Sec. 1. (a) No city, town, county, public institution, firm, corporation, ~~or~~ officer or employee thereof, or other person shall install or contract for the construction of any public water ~~supply system~~ facilities, including water purification or treatment works, or make any material change in any such existing facilities or works, until plans and specifications, together with an engineer report supporting in detail the design set forth in ~~such the~~ plans, shall have been submitted to and approved by the commissioner, so far as relates to their sanitary features **except for at small transient noncommunity public water systems which are set forth in section 2 of this rule.**

(b) After ~~such the~~ plans and specifications have been approved by the commissioner, no material changes in the location, plans, construction, or operation of any ~~such the~~ system or works may be made without first submitting to the commissioner a detailed statement of such proposed changes and receiving its approval.

(c) ~~Said~~ The plans, specifications, reports, and other information shall be submitted of ~~such the~~ form and contents as may from time to time be specified by the commissioner.

(d) Whenever information regarding:
(1) already existing water ~~supply system~~ facilities or water treatment works; or ~~regarding~~
(2) the operation and maintenance thereof;
 may be required by the commissioner, the public officials, or person, firm, or corporation having the works in charge shall promptly furnish such information.

(e) All such plans hereafter to be submitted to the commissioner for approval shall:
(1) have been prepared by or under the supervision of a professional engineer legally registered in the state of Indiana;
(2) be certified by ~~him~~ **the professional engineer**; and
(3) bear ~~his~~ **the professional engineer's** official seal;
except as allowed for small transient noncommunity public water systems under section 2 of this rule.

(f) Provided that nothing contained in this rule (~~327 IAC 8-4~~) shall apply to water supplies installed or to be installed in connection with a private dwelling or residence. (*Water Pollution Control Board; 327 IAC 8-4-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 711; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 44. 327 IAC 8-4-2 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-4-2 Small transient noncommunity public water system construction requirements

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. (a) Construction at a small transient noncommunity public water system must be in accordance with section 1 of this rule and 327 IAC 8-3-2.1 except as allowed in subsections (b) and (c).

(b) Construction for the following items, if not installed to meet the requirements of 327 IAC 8-2, are not required to obtain a permit:

- (1) Ion exchange softeners.**
- (2) Ultraviolet treatment.**

(3) Cartridge filters.

(4) Reverse osmosis.

(5) Other items determined by the commissioner to not require a permit.

(c) A small nontransient noncommunity water system may proceed with construction of items listed in subsection (b) without meeting the requirements of section 1 of this rule, provided the following criteria are met:

(1) The installed construction or device must meet the requirements of 327 IAC 8-1.

(2) The small nontransient noncommunity public water system must notify the commissioner within thirty (30) days of completion of construction of the installation. The notification must be in writing and must include the following:

(A) The type of construction or device installed.

(B) The date of installation.

(C) Contact information for the contractor (if used).

Any construction must be designed and operated to meet the requirements of 327 IAC 8-6. (*Water Pollution Control Board; 327 IAC 8-4-2*)

SECTION 45. 327 IAC 8-6-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-6-1 Improvements required in public water system or treatment works

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 1. (a) Whenever investigation by the commissioner shall show any public water ~~supply system~~, or water treatment works, or any part thereof to be inadequate or to be improperly located, constructed, or operated, and by reason thereof to be causative of disease, or that the water obtained therefrom fails to meet the drinking water standards of 327 IAC 8-2, the person, firm, corporation or ~~municipally~~ **municipality** owning ~~and/or or~~ operating, ~~said or both, the~~ public water ~~supply system~~ or water treatment works, upon receipt of an official order from the commission, shall proceed within such time as is therein provided to carry out ~~such the~~ changes, extensions, or improvements, or to institute ~~such the~~ changes in the methods of operation of ~~said the~~ public water ~~supply system~~ or water treatment works as may be necessary to abate ~~such the~~ conditions.

(b) Any order of the commissioner shall:

(1) be a written order; and ~~shall~~

(2) establish a time within which the steps contemplated in ~~said the~~ order shall be carried out.

(c) Provided that ~~such the~~ official order shall not be issued by the commissioner until an opportunity for a hearing has been given to the person, firm, corporation, or municipality owning ~~and/or or~~ operating, ~~said or both, the~~ public water ~~supply system~~ or water treatment works, at which hearing the facts as shown by the investigation made by ~~said the~~ commissioner shall be presented to ~~said the~~ person, firm, corporation, or municipality. Notice of ~~such the~~ hearing shall be given not less than ten (10) days ~~prior to before~~ the date set for ~~said the~~ hearing. (*Water Pollution Control Board; 327 IAC 8-6-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 712; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on March 9, 2005, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Water Pollution Control Board will hold a public hearing on amendments to 327 IAC 8-1, 327 IAC 8-3, 327 IAC 8-3.1, 327 IAC 8-3.2, 327 IAC 8-3.3, 327 IAC 8-3.4, 327 IAC 8-3.5, 327 IAC 8-4, and 327 IAC 8-6.

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 Kiran Verma, Rules Section, Office of Water Quality, (317) 234-0986 or (800) 451-6027 (in Indiana). Technical information concerning these rules may be obtained from Stacy Jones, Drinking Water Branch, Office of Water Quality, (317) 308-3292 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 or (317) 232-6565 (TDD). 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 Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor, Indianapolis, Indiana and are open for public inspection.

AUTHORITY: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

(1) the environment; or

(2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND
Sunset Legislation

In 1996, the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5. 327 IAC 3-2, construction of water pollution treatment/control facilities and sanitary sewers, is subject to IC 13-14-9.5. All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect. IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only. IC 13-14-9.5-4(b) provides that if a person submits to the department or board that has rulemaking authority under Title 13 a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule. 327 IAC 3-2 was first noticed for readoption in the first sunset rulemaking (LSA #00-46). Because a request and a basis for the request was submitted during the first comment period, 327 IAC 3-2 was not readopted in the first sunset rulemaking. Other sections of the rule were amended in 1999; however, sections 1, 3, and 5 were not amended and have, therefore, expired.

Purpose of Rule and Explanation of Limited Policy Alternatives

Part of Indiana's construction of water pollution treatment/control facilities and sanitary sewers rule, 327 IAC 3-2-1, 327 IAC 3-2-3, and 327 IAC 3-2-5, were not amended when the rule was opened for amendment and adopted in 1999. 327 IAC 3-2-2, 327 IAC 3-2-2.5, 327 IAC 3-2-4, and 327 IAC 3-2-6, remain in effect until January 1, 2006. The expired sections of the rule are authorized under IC 13-18-3 and other general authorities. These sections provide essential application information, procedures, and conditions for construction approval. Therefore, a complete rule is necessary to provide such information to the entities required to obtain facilities construction permits and to adequately protect Indiana's waters. Therefore, rules identical to the

TITLE 327 WATER POLLUTION CONTROL BOARD
**FINDINGS AND DETERMINATION OF THE
COMMISSIONER PURSUANT TO IC 13-14-9-7 AND
SECOND NOTICE OF COMMENT PERIOD**

#04-320(WPCB)

**DEVELOPMENT OF NEW RULES CONCERNING STATE
PERMITS FOR CONSTRUCTION OF WATER POLLUTION
FACILITIES AND SANITARY SEWERS**
PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule concerning state permits for the construction of water pollution treatment/control facilities and sanitary sewers. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: 327 IAC 3-2-1.5; 327 IAC 3-2-3.5; 327 IAC 3-2-5.5.

expired sections should be expeditiously adopted to allow for continuity in the construction permit program. There are limited policy alternatives because the construction of water pollution treatment/control facilities and sanitary sewers require a permit under state law and state law requires the adoption of rules for the issuance of such permits. The number of permittees that are covered by 327 IAC 3-2 is not known since the rule concerns the future permitting of construction activities. This rulemaking will provide an opportunity for public comment and adoption of 327 IAC 3-2-1.5, 327 IAC 3-2-3.5, and 327 IAC 3-2-5.5. The proposed language in these sections is identical to the language in the expired sections.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

Elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL elements). However, this rule is required under IC 13-18-3-1 and IC 13-18-3-12. IC 13-18-3-1 requires the water pollution control board to adopt rules "for the control and prevention of pollution in waters of Indiana..." IC 13-18-3-12 provides exemptions from construction permitting in certain situations. Any proposed construction of sanitary sewers that does not meet those exceptions must acquire a state permit.

There is expected to be no additional fiscal impact to affected entities with the adoption of this rule. The rule merely readopts permitting requirements that have been implemented under the expired rules since those expired rules were adopted in 1987.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on 327 IAC 3-2, state permits for the construction of water pollution treatment/control facilities and sanitary sewers. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) This rule is necessary for the continuation of the construction permitting program under 327 IAC 3-2.
- (2) The expiration of 327 IAC 3-2-1, 327 IAC 3-2-3, and 327 IAC 3-2-5 occurred because those particular sections were not amended in the 1999 rulemaking concerning 327 IAC 3-2. The expiration was unintentional.
- (3) The draft rule language merely repromulgates the expired sections of the rule to allow the construction permit program to provide necessary information to applicants seeking construction permits required under state law.
- (4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (5) The draft rule is hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#04-320(WPCB) State permits for construction of water pollution control facilities
Larry Wu, Chief
Rules Development Section
Office of Water 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 twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-8406, 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 Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 31, 2005.

Additional information regarding the rulemaking action may be obtained from Larry Wu, Rules Development Section, Office of Water Quality, (317) 233-8544 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 3-2-1.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-1.5 Requirement of valid permit

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

Sec. 1.5. No person shall cause or allow the construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer, without a valid construction permit issued by the commissioner. (*Water Pollution Control Board; 327 IAC 3-2-1.5*)

SECTION 2. 327 IAC 3-2-3.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-3.5 Conditions of approval

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

Sec. 3.5. (a) The permit may specify expiration dates by which the construction must be started and completed, which dates shall be compatible with any Federal and/or State grants or grant funds impacted. The commissioner may grant an extension of time for start and completion of construction if the commissioner believes such extension is necessary and justified.

(b) The commissioner shall have the authority to specify the limits and conditions necessary to insure proper design and ease of operation of water pollution treatment/control facilities.

(c) Sanitary sewers which have been issued construction permits shall be tested for infiltration/exfiltration in a method approved by the commissioner. All force mains shall be tested for leakage in an approved method. Results of the infiltration/ exfiltration test for sanitary sewers and leakage test for force mains shall be submitted for approval within ninety (90) days of completion of construction. Failure to submit test results within the allotted time period or failure to meet guidelines for infiltration/ inflow and leakage would be subject to enforcement proceedings as provided by 327 IAC 3-5-3.

(d) Sanitary sewers that are flexible in type and which are issued

construction permits shall be tested for vertical deflection. The tests shall be conducted after the final backfill has been in place at least thirty (30) days. No flexible sewer shall exceed a vertical deflection of five percent (5%). (*Water Pollution Control Board; 327 IAC 3-2-3.5*)

SECTION 3. 327 IAC 3-2-5.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-5.5 Non-site-specific permit

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

Sec. 5.5. The commissioner may grant a non-site-specific construction permit for the following category of discharger: Short term drainage/sediment control lagoons.

- (1) Said lagoons are those constructed according to approved general plans and specifications, however, the specific site location changes with time.
- (2) Any request for issuance of such a non-site-specific, on-going construction permit shall be made by the applicant in conjunction with the application information presented in 327 IAC 3-2-2.
- (3) It shall be the responsibility of the recipient of such a permit to notify the commissioner each time of a change in location of the permitted facility.

(*Water Pollution Control Board; 327 IAC 3-2-5.5*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on March 9, 2005 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on a proposed new rule concerning state permits for the construction of water pollution treatment/control facilities and sanitary sewers.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. 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 Larry Wu, Rules Section, Office of Water Quality, (317) 232-8635 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 or (317) 233-6565 (TDD). 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 Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

**FINDINGS AND DETERMINATION OF THE
COMMISSIONER PURSUANT TO IC 13-14-9-7,
TENTATIVE RECOMMENDATION FOR RULEMAKING,
AND SECOND NOTICE OF COMMENT PERIOD
#04-318(SWMB)**

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERN-
ING EXCLUSION OF A HAZARDOUS WASTE FROM
REGULATION UNDER 329 IAC 3.1 (DELISTING)**

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for an amendment to a rule excluding a hazardous waste from regulation under 329 IAC 3.1-5-2 (delisting). This delisting was granted in 2001 to Heritage Environmental Services LLC for treated electric arc furnace dust produced at Nucor Steel, Division of Nucor Corporation, located in Crawfordsville, Indiana. The purpose of this notice is to publish the commissioner's tentative recommendation for rulemaking to increase the amount of hazardous waste excluded under this delisting and to seek public comment on the recommendation and the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 3.1-6-6.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-22-2.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

**SUBJECT MATTER AND BASIC PURPOSE OF
RULEMAKING**

Basic Purpose and Background

On November 1, 2001 (25 IR 372), we published a final rule at 329 IAC 3.1-6-6 delisting electric arc furnace dust (EAFD) generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor Corporation (Nucor) at Nucor's Crawfordsville,

Indiana plant. This EAFD is treated to be nonhazardous and is subject to a rigorous quality assurance program to ensure that the delisting levels required in the rule are maintained. This delisting rule is currently limited to thirty thousand (30,000) cubic yards of treated EAFD annually.

On November 12, 2004, Heritage requested that the EAFD quantity limit be raised to sixty thousand (60,000) cubic yards annually to accommodate increased steel production at Nucor's Crawfordsville plant. This rule proposes to increase that quantity limit. If this increase is approved, Heritage would have to maintain the required quality assurance program for all delisted EAFD.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

The Resource Conservation and Recovery Act (RCRA)(42 U.S.C. 6901 et seq.) requires states that wish to administer their hazardous waste management programs in lieu of the federal hazardous waste program to maintain their programs at least as stringent as the federal program. Indiana is authorized under 40 CFR 271 to administer the hazardous waste management program in lieu of the federal hazardous waste program administered by the U.S. Environmental Protection Agency (EPA). Authorized states are required to adopt changes to the federal program that are more stringent than the existing federal program. However, states are not required to adopt a hazardous waste delisting program because delisting a waste results in a program that is less stringent than the existing federal program.

P.L.45-1997 and P.L.128-1997 required IDEM to adopt a hazardous waste delisting program. That delisting program was established in 1998 and authorized by EPA in 2001.

Because the delisting program is an optional program, the action proposed in this rulemaking is not imposed under federal law. As required by IC 13-14-9-4, the following element of the draft rule imposes a requirement that is not imposed under federal law:

Increase the quantity of treated electric arc furnace dust that may be excluded from regulation as hazardous waste under 329 IAC 3.1-6-6 from thirty thousand (30,000) cubic yards to sixty thousand (60,000) cubic yards annually.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: Nucor is increasing its steel producing capacity, and the quantity limit in the current delisting does not cover all EAFD produced.

Examples in which federal law is inadequate: Federal law is not inadequate. This delisting authority rests solely in Indiana rules, because Indiana's delisting program operates in lieu of the federal delisting program.

Estimated fiscal impact and expected benefits: While we expect Heritage and Nucor to experience some savings by disposing of the additional delisted EAFD in a nonmunicipal solid waste landfill rather than a hazardous waste disposal facility (both owned by Heritage), the actual costs of disposal are proprietary. The actual savings, if any, cannot be quantified at this time.

Availability for public inspection of all materials relied on by IDEM in the development of this element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

Potential Fiscal Impact

Because the actual costs of disposal of this additional quantity of treated EAFD in Heritage's nonmunicipal solid waste landfill and hazardous waste disposal facility are proprietary, the actual savings, if any, cannot be quantified at this time.

Effect on Industries Listed in Public Law 231-2003, SECTION 6

In accordance with P.L.231-2003, SECTION 6, this rule cannot

require a person who engages in any of the following industries (identified by Standard Industry Classification Code (SIC Code) to comply with a standard of conduct that exceeds the standard of conduct established in the related federal regulation or regulatory policy until July 1, 2005:

Blast furnaces and steel mills (SIC 3312);
Gray and ductile iron foundries (SIC 3321);
Malleable iron foundries (SIC 3322);
Steel investment foundries (SIC 3324);
Steel foundries (SIC 3325);
Aluminum foundries (SIC 3365);
Copper foundries (SIC 3366); and
Nonferrous foundries (SIC 3369).

However, while the provision proposed to be adopted in this rule is not imposed under federal law, it does not exceed the standard of care established in the related federal regulation. As a result, P.L.231-2003, SECTION 6 does not apply to this rulemaking.

Public Participation and Workgroup Information

We do not intend to form a workgroup for this rulemaking at this time.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking to increase the amount of a waste delisted under 329 IAC 3.1-6-6. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) Based on the department's analysis of the request described above, I have determined that the increased quantity of waste to be delisted under this rule will continue to meet the criteria in 40 CFR 260.22 for delisting when treated in accordance with the treatment process described in 329 IAC 3.1-6-6. At this time, I recommend that the amount of waste excluded from regulation under 329 IAC 3.1-6-6 be increased to sixty thousand (60,000) cubic yards annually. This recommendation may be modified or reversed based on the public comments received.
- (2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (3) The draft rule is hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#04-318(SWMB)[Heritage EAFD Delisting]
Marjorie Samuel
Rules, Planning and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor East, Indianapolis, Indiana.

Comments may be submitted by facsimile at (317) 232-3403, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of

faxed comments by calling the Rules, Planning and Outreach Section at (317) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by February 1, 2005.

Additional information regarding this action may be obtained from Steve Mojonner of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 329 IAC 3.1-6-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-6 Waste excluded from regulation; Heritage Environmental Services, LLC and Nucor Steel Corporation, Crawfordsville, Indiana

Authority: IC 13-14-8; IC 13-22-2

Affected: IC 13-22

Sec. 6. Electric arc furnace dust (EAFD), hazardous waste code K061, that is generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor, Corporation (Nucor) at Nucor's Crawfordsville, Indiana plant, and treated to be nonhazardous is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:

(1) Delisting levels for the waste excluded by this section are as follows:

(A) The constituent concentrations measured in any of the extracts required by subdivision (2) must not exceed any of the levels listed in Table 1:

Table 1. Maximum Constituent Concentrations in TCLP Extracts

Antimony	0.206 mg/L
Arsenic	0.0936 mg/L
Barium	55.7 mg/L
Beryllium	0.416 mg/L
Cadmium	0.15 mg/L
Chromium (total)	1.55 mg/L
Lead	5.0 mg/L
Mercury	0.149 mg/L
Nickel	28.3 mg/L
Selenium	0.58 mg/L
Silver	3.84 mg/L
Thallium	0.088 mg/L
Vanadium	21.1 mg/L
Zinc	280 mg/L

(B) Total mercury in the treated EAFD must not exceed one (1.0) milligram per kilogram.

(2) Heritage shall demonstrate on a monthly basis that the constituents in the treated EAFD do not exceed the delisting levels in subdivision (1) as follows:

(A) Heritage shall collect two (2) representative samples of the treated EAFD each month. Each sample must be analyzed using all of the following tests:

(i) Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), described in U.S. Environmental Protection Agency Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", 3rd Edition (November 1986), as amended by Updates I (July 1992), II (September

1994), IIA (August 1993), IIB (January 1995), and III (December 1996) (SW-846).

(ii) Method 1311, described in item (i), substituting an extraction fluid with a pH of 12.0 ± 0.05 standard units for the normal extraction fluid. Heritage may remove dissolved oxygen to less than five-tenths (0.5) parts per million by the addition of a stoichiometric amount of sodium hydrosulfite.

(iii) Method 7471A, Mercury in Solid or Semi-Solid Waste (Manual Cold-Vapor Technique), described in SW-846.

(B) Detection levels must be less than the delisting levels in subdivision (1).

(C) Heritage must comply with Chapter 1, "Quality Control", of SW-846.

U.S. Environmental Protection Agency Publication SW-846 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) Changes in the manufacturing process or the treatment process must be managed as follows:

(A) Heritage must notify the department in writing if any of the following occur:

(i) If Nucor changes the manufacturing process or chemicals used in the manufacturing process from those described in the petition for delisting.

(ii) If Heritage changes the treatment process or the chemicals used in the treatment process from those described in the petition for delisting.

(B) Heritage must handle all wastes generated after any process change as hazardous waste until all of the following occur:

(i) Heritage has demonstrated that:

(AA) the wastes continue to meet all delisting levels in subdivision (1); and

(BB) no new hazardous constituents listed in 40 CFR Part 261, Appendix VIII have been introduced.

(ii) Heritage has received written approval from the department to continue to manage the treated EAFD under this exclusion.

(4) Heritage must submit an annual report that summarizes the data obtained through monthly verification testing to IDEM by February 1 of each year. The report must include the results of each month's analysis required by subdivision (2) for the previous calendar year.

(5) Heritage must compile, summarize, and maintain records of operating conditions and analytical data. The records must be maintained for a minimum of five (5) years. The records must be made available for inspection by the department during normal working hours.

(6) All data required by subdivisions (4) and (5) must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

(7) The treated EAFD must be disposed of in accordance with:

(A) 329 IAC 10; or

(B) this article.

(8) Solid waste landfill units permitted under 329 IAC 10 that accept the treated EAFD must comply with the ground water monitoring requirements of 329 IAC 10-21.

(9) The treated EAFD must be covered in accordance with 329 IAC 10-20-13 through 329 IAC 10-20-14.

(10) Only the following materials may be used as alternative daily cover over the treated EAFD:

(A) Category B slag debris.

(B) Foundry sand.

(C) Petroleum contaminated soils.

(D) Fly ash.

(E) Conditioned fly ash.

(F) Coal ash.

(G) Uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.

(H) Other materials approved in accordance with 329 IAC 10-20-14.1 for use over the treated EAFD after the effective date of this rule.

(11) No waste that is capable of providing oxygen or acting as a source of oxygen may be disposed of in the same cell or unit as the treated EAFD.

(12) If, at any time after disposal of the delisted waste, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent identified in subdivision (1) is at a level in a test extract or in the leachate that is higher than the delisting level listed in subdivision (1), then Heritage must report such data in writing to the commissioner within ten (10) days of first possessing or being made aware of that data.

(13) If, at any time after disposal of the treated EAFD, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any of the following constituents is at a level in the ground water higher than the levels listed in Table 2:

Table 2. Maximum Allowable Concentrations in Ground Water

Antimony	0.006 mg/L
Arsenic	0.005 mg/L
Barium	2.0 mg/L
Beryllium	0.004 mg/L
Cadmium	0.005 mg/L
Chromium	0.1 mg/L
Lead	0.015 mg/L
Mercury	0.002 mg/L
Nickel	0.753 mg/L
Selenium	0.05 mg/L
Silver	0.187 mg/L
Thallium	0.002 mg/L
Vanadium	0.263 mg/L
Zinc	11.25 mg/L
Sulfides	1.0 mg/L

then Heritage must report such data in writing to the commissioner with ten (10) days after first possessing or being made aware of that data.

(14) No more than ~~thirty six~~ thousand ~~(30,000)~~ (60,000) cubic yards of treated EAFD may be treated or disposed of annually under this exclusion.

(Solid Waste Management Board; 329 IAC 3.1-6-6; filed Oct 3, 2001, 9:43 a.m.: 25 IR 372)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8, and IC 13-14-9, notice is hereby given that on February 15, 2005, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on proposed amendments to rules at 329 IAC 3.1-6-6.

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 to 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

Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Land Quality, 100 North Senate Avenue, and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin

Deputy Assistant Commissioner

Office of Land Quality

Other Notices

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-93(F), as published at 27 IR 2444, provides that the rule takes effect upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. Notice of approval has been received and is published at 69 FR 69280 (November 29, 2004).

INDIANA DEPARTMENT OF INSURANCE

November 29, 2004

Bulletin 127

PATIENT'S COMPENSATION FUND – SURCHARGE RATES FOR HOSPITALS AND PHYSICIANS

This bulletin is directed to all health care providers electing to be qualified under Indiana's Medical Malpractice Act (IC 34-18-1-1 *et seq.*) and to insurers that provide coverage to those health care providers.

Pursuant to IC 34-18-5-2, the Commissioner of the Department of Insurance in her capacity as administrator of the Patient's Compensation Fund hereby notifies physicians and hospitals of the following surcharge for qualification under the Medical Malpractice Act. The rates are effective for coverage beginning **February 1, 2005**.

PHYSICIANS

The percentage increase to the physician rates is the same for each specialty class. A complete list of physician specialty class codes is published at 760 IAC 1-60.

CLASS	ANNUAL RATE
0	\$2,645
1	3,527
2	4,937
3	6,348
4	7,935
5	10,580
6	15,870
7	24,686
8	29,976

HOSPITALS

The surcharge for a hospital is calculated using the attached worksheet. The completed worksheet shall be submitted to the Department along with the surcharge payment.

INDIANA DEPARTMENT OF INSURANCE

Amy E. Strati, Acting Commissioner

HOSPITAL EXPOSURE WORKSHEET FOR SURCHARGE CALCULATION

Name of Hospital: _____

License No: _____

List all facilities and/or services operated under the hospital license (as identified on the Department of Health Application for License to Operate a Hospital):

CATEGORY	EXPOSURE	MANUAL	TOTAL
Provide # of Beds			Category x Manual = Total
	Hospital (Acute care and Intensive Care)	682.00	
	Mental Health/Rehabilitation	341.00	
	Extended Care/Intermediate Care/Residential	34.00	
	Nursing Home/Critical Extended Care	341.00	
	Health Institution/Assisted Living/Other	136.00	
	Bassinets	682.00	
# of Visits (in 100s)			
	Emergency Room	68.20	
	Clinics/Others	34.10	
	Mental Health/Rehabilitation	17.05	
	Health Institution	13.64	
	Home Health Care	34.10	

Nonrule Policy Documents

Provide # of Surgeries/Births (in 100s)			
	Births	2,728.00	
	Outpatient Surgeries	68.20	
	Inpatient Surgeries	1,364.00	
Employed Physicians Sharing Limits	50% of Specialty Code		
		SUB-TOTAL	
	Lack of Risk Management Program	10% Penalty x sub-total	
	Hospital with > 500 beds	3% multiplier of subtotal	
		TOTAL DUE	

NATURAL RESOURCES COMMISSION GEOCACHING ON DNR PROPERTIES Information Bulletin #46

1. Purpose and Application

The purpose of this information bulletin is to provide guidance for the management of geocaching activities on a DNR property. A person who participates in geocaching is subject to 312 IAC 8. A “cache” is a “device” and requires a license from the department under 312 IAC 8-2-10(6)(B). The standards for a license are outlined by this information bulletin.

2. Definitions

- (1) “Cache” means a container that is used in association with geocaching. A cache typically includes items such as a logbook, pen, pencil, map, or trinkets.
- (2) “Department” refers to the department of natural resources.
- (3) “DNR property” has the meaning set forth in 312 IAC 8-1-4(3).
- (4) “Geocaching” means a game pursued by global positioning system (or “GPS”) users. An individual or organization places a cache or caches and shares its or their location on the Internet. A participant in the game applies the GPS coordinates to locate a target cache or caches. When located, the participant records the find on a designated website such as www.geocaching.com. The game may provide that objects are traded at the cache.
- (5) “Multi-cache” refers to containers that are located from information received in another cache.
- (6) “Virtual cache” refers to the target for geocaching for which there is no container. The location itself is the cache. Objects are not traded at the site of a virtual cache.

3. License Applications

(a) A person must obtain an “official geocaching placement license” on a department form before placing a cache on or within a DNR property. A cache that is placed without first obtaining a license under this information bulletin may be removed by the department and disposed as provided in “Personal Property Found on DNR Properties” (Information Bulletin #23).

(b) The property manager is authorized to issue, condition, or deny a license application.

(c) A person who is aggrieved by a determination by the property manager may seek informal review from the division director. A determination by the division director is subject to administrative review under 312 IAC 3-1.

4. General Prohibitions, Limitations, and Requirements

The following prohibitions apply to the placement of any cache and to any geocaching activity:

- (1) A person must not violate 312 IAC 8 or another state or a federal law.
- (2) Properties administered in whole or in part by the following divisions of the department do not qualify for geocaching:
 - (A) Division of nature preserves (including any property dedicated under IC 14-31-1).
 - (B) Division of museums and historic sites.
 - (C) Division of outdoor recreation.
- (3) A person must not dig or otherwise disrupt the ground when placing a cache.
- (4) A person is limited to a maximum of two (2) official geocaching placement licenses on a particular DNR property at any time.
- (5) The maximum number of caches that can be approved on a DNR property at any time is the lesser of the following:
 - (A) Twenty-five (25); or

(B) The number derived by dividing the total acreage of the DNR property by two hundred (200) acres. A DNR property containing fewer than two hundred (200) acres does not qualify for geocaching.

(6) A property manager is not required to approve any multi-cache but may approve not more than five (5) multi-caches under an official geocaching placement license.

(7) As soon as practicable after placing a cache, the person who holds an official geocaching placement license must record the exact location on the copy of the license maintained by the property manager.

(8) The person who holds an official geocaching placement license must inspect any cache at least once every six (6) months to help ensure compliance with this information bulletin. During the inspection, the person must remove from the cache any food, alcohol, firearms, drugs, items unsuitable for minors, or other items that may pose a danger to people or wildlife.

(9) An official geocaching placement license expires one (1) year after the date of issuance.

5. License Standards

The property manager shall exercise reasonable discretion in determining whether to issue, condition, or deny an application for an official geocaching placement license. In the exercise of discretion, the following factors and principles apply:

(1) A cache cannot be approved for placement in a sensitive archaeological, historical, or ecological area. Examples include historic buildings or structures, caves, or areas that contain rare, threatened, or endangered plant or animals.

(2) A scheduled resource management activity, such as a timber sale or a prescribed burn, shall be considered in evaluating a license application.

(3) A cache cannot be approved for placement in an area that could reasonably cause danger to a geocaching participant or to another person who visits the DNR property. Examples of inappropriate areas include cliffs, bluffs, trees, lakes, streams, and roads.

(4) For inclusion with the license application, the property manager may require a person issued an official geocaching placement license to provide a photograph of the cache, the site where the cache is placed, or both.

(5) Any other factor reasonably consistent with proper use and protection of the particular DNR property, including implementation of a master plan.

(6) A virtual cache is exempted from licensing under this information bulletin, but a person who administers or seeks a virtual cache must comply with 312 IAC 8.

6. License Suspension or Revocation and Site Reclamation

(1) The property manager may suspend or revoke an official geocaching placement license, if a term of the license or of this information bulletin is violated, or if the location of the cache is found to pose a hazard to safety or the environment. The property manager shall make a reasonable attempt to notify the license holder of the action, as well as to notify the designated website. The reasons for the property manager's action shall be recorded with the license. If the license holder elects to relocate the cache, a new license application is required.

(2) Upon the suspension, revocation, or termination of an official geocaching placement license, the license holder is responsible for removal of the cache, for site restoration, and for any associated expenses. A person who places a cache without a license has the same responsibilities as if issued a license.

(3) A person who is aggrieved by a suspension or revocation may seek administrative review under 312 IAC 3-1.

7. History

The Natural Resources Commission approved this information bulletin on November 16, 2004. The information bulletin was published in the Indiana Register and became effective on January 1, 2005.

NATURAL RESOURCES COMMISSION

Information Bulletin #47

January 1, 2005

Horses on DNR Properties

1. Purpose

Horseback riding is an appropriate recreational use on trails at designated DNR properties. Horseback trails are constructed and maintained according to agency standards and are located so they do not unacceptably alter natural resources or other recreational opportunities.

This information bulletin defines policies governing the recreational use of horses on DNR properties. The purpose is to help assure the application of fiscally and ecologically sound decision-making in property management. The information bulletin is supportive of 312 IAC 8.

2. Definitions

The definitions contained in 312 IAC 8-1-4 apply to this information bulletin. The term "horse" includes a horse, mule, pony, equine, llama, or other hoofed animal ridden or driven as a pack animal.

3. History

The recreational use of horses on DNR properties is as old as DNR property management. A majority of the trail system was established in the early 1930s when horses were the primary source of transportation in much of rural Indiana. Recreational trail riding grew from this early transportation system. For several decades, recreational horse use was limited to a small number of local residents, and there were few agency policies. This informal approach led to problems and inconsistencies.

In recent years, the number and variety of recreational horse users has increased substantially. Rules and formal policies have sought to provide all users with an enjoyable recreational experience while protecting natural resources. The natural resources commission approved a policy statement in 1994. The statement was amended during the commission's February 21, 1996 meeting with approval of the "Policy Guidelines for Recreational Horse Use".

The current information bulletin updates and supersedes the previous commission guidelines. The Natural Resources Commission approved it on November 16, 2004. The current information bulletin was published in the Indiana Register and became effective on January 1, 2005.

4. Policy Development

The following steps were used in developing this information bulletin:

- Determine the issues.
- Seek input from affected persons.
- Develop fiscally and ecologically sound ways to address the issues.
- Provide a framework for two-way communications and cooperation between DNR property managers and property users.
- Implement the policy.
- Periodically review and evaluate the policy.

A horse use opinion survey was conducted during the summer of 1993 to solicit information from a cross-section of interested persons. A wide spectrum of people was asked to participate in the survey. Included were horse users, non-horse users, resource professionals, property neighbors, and local and statewide interest groups.

The survey included 53 questions, and an opportunity was provided to offer general comments. Of 764 surveys distributed, 291 were completed and returned. Survey results were used to identify, consolidate, and prioritize issues. The survey also helped establish a communications framework between interested persons and the DNR. The framework has proven helpful to implementing a uniform policy.

5. Policy Statements

A. Horse-Drawn Vehicles

A horse-drawn vehicle may be operated on a public road or on a road or trail designated for this use. A horse-drawn vehicle used on a DNR property must meet safety standards for slow-moving vehicles on a state highway. Horses must be tagged as provided in 312 IAC 8-2-6. The operator must have prior approval from the DNR to livery or use for hire a horse-drawn vehicle on a DNR property. The DNR shall exclude horse-drawn vehicles from areas open to motorized vehicles if the presence of a horse would violate a public health or safety law.

B. Horse Campgrounds

The establishment and operation of a horse campground shall comply with 312 IAC 8, and with the "DNR Horse Trail and Horse Campground Standards Manual". Horse campgrounds are limited to persons camping with horses. Camping with horses is limited to areas designated as horse campgrounds.

A person keeping horses in a horse campground must collect and place horse manure at a designated collection site. Horses may be washed only at stations designated for this purpose. A person must not wash a horse at a drinking water fixture, waste dumping station, stream, pond, or lake.

C. Trail Density and Equine Carrying Capacity

To protect natural resources and recreational values, the density of horse trails on DNR properties is limited as follows:

High Density Trail Area: Except on a special concern area, within one mile of a horse campground or a day-use area, the maximum density is 4.5 miles of trail per square mile (640 acres) of state ownership.

Low Density Trail Area: Except on a special concern area, for an area outside a high density trail area, the maximum trail density is 2.5 miles of trail per square mile (640 acres) of state ownership.

Special Concern Area: A special concern area is an area designated by the property manager with approval by the division director. Examples of qualification for a special concern area include:

- A dedicated nature preserve.
- A designated old forest.
- Developed non-horse recreation.
- Location within 500 feet of a known cave entrance.
- A noncontiguous tract of less than 640 acres.
- Lack of legal access.
- The conduct of sensitive research activities.
- The presence of an extreme slope.
- Conditions subject to erosion.

Designation as a special concern area does not prohibit a trail, but a trail will require additional care and expense in construction

and maintenance. Trail mileage shall be minimized.

Equine carrying capacity is the maximum number of horses allowed to use a DNR property at any time. The capacity is determined by multiplying the total miles of designated horse trails on a property by ten. See Appendix A for further information.

D. Animal Health Requirements

The owner of an animal brought onto a DNR property is solely responsible for each of the following:

- Providing proof of required vaccinations and applicable health statements under 345 IAC 6-1.1 and 345 IAC 7-5 before entrance.
- The humane treatment of any animal.
- The procurement and payment for any veterinary services.
- The payment of any expense for the removal of injured or dead animals.

E. Horseback Access to a DNR Property

Access to a DNR property by horseback is limited to a designated public entrance. A public entrance is a horse campground, day-use parking area, designated trailhead, and (for ride-on users only, no vehicle or trailer access) where a designated horse trail intersects a public road.

Access from an adjacent private property is allowed only if the following conditions are met:

1. The access is made a designated public trailhead for all horse users where the landowner either:
 - a. accepts, in writing, liability for public access through the landowner's property; or
 - b. grants a recreational access easement to the DNR.
2. The development of the access is not otherwise inconsistent with this information bulletin and is consistent with the property plan for horse trail management.

F. Multiple Use and Single Use Trails

A recreational trail on a DNR property shall be designated for hiker only, horse and hiker, or an otherwise identified special use. The designation shall be based on natural resource, recreation, and maintenance considerations. As provided in 312 IAC 8-2-6, a person shall not use a horse except on an area or trail designated for this purpose.

G. Annual Horse Tag

Between April 1 and November 30, a person with a horse driven, ridden, brought, or transported onto a DNR property for day use or overnight camping must possess an annual horse-use tag. The tag must be displayed on the tack of a horse or be possessed by the rider and made available for inspection upon request. The commission determines the cost of the annual horse-use tag. The tag is valid only on a DNR property where horse use is an approved activity. A horse-use tag does not authorize entrance if a facility is filled to capacity or is closed.

H. Special Event Ride

The DNR may authorize a special event ride where the following conditions are met:

1. The event is limited in size so as not to exceed the specified equine carrying capacity of the facility.
2. The property manager issues a written permit with appropriate conditions and a deposit fee.
3. The property manager pre-approves the use of any trail or facility.
4. The permit holder agrees to comply with the permit, this information bulletin, and 312 IAC 8.

I. Evaluation of Suitability of DNR Property for Horseback Trail Riding

The division that manages a DNR property is responsible for determining whether horseback trail riding is an approved activity on the property. The determination shall be based on the mission of the division and the environmental impact, with the benefit of public input.

A DNR property that would support less than ten miles of horse trails under the trail density standards is not suitable for horseback trail riding. A DNR property that would support at least ten but less than 20 miles of trails may be considered for day-use but is not suitable for a horse campground.

The DNR shall not add a new or expand an existing horse facility unless each of the following is satisfied:

1. The current horse use facilities on the property satisfy the "DNR Horse Trail and Horse Campground Standards Manual".
2. Adequate funding is available to assure proper operation and maintenance of the current and proposed new facilities.
3. The need is established for additional facilities.

J. Safety

The following standards apply to the promotion of public safety:

1. A person shall not ride at night on a horse trail section that is a public road.
2. Use of a public road for a horse trail shall be limited to where another trail routing is not feasible. The DNR shall minimize the use of a public road for a horse trail.
3. During a hunting season, a property manager may close a horse trail to riding or may close an area with a horse trail to hunting. The DNR shall conspicuously sign any such closure.
4. When not being ridden, a person must lead a horse by halter or reins or must confine a horse in an approved corral or trailer. Unless a property manager grants written permission, a person must not use a portable corral or an electric fence and must confine a horse to the hitching rail pad area of a campsite. An electric fence must have visible identification and must use

battery-powered or solar energizers and wide electric polytape wire.

5. A person must keep a horse at a flat walk within a horse campground or a day-use parking area.

6. The DNR may require a person with an unruly horse, which is causing a disturbance or safety hazard, to remove the horse from the DNR property. 312 IAC 8-2-6(b).

K. Volunteers and Donations

The DNR shall actively pursue programs with individuals or groups that wish to volunteer services or donate funds or materials to improve facilities on a DNR property. Volunteer services and donations shall be used only within a structured program approved by the division and consistent with this information bulletin and the approved uses of a property. Whenever practicable, a structured program shall be developed jointly by the property employees and the volunteers. The program shall focus on bringing an existing facility to current standards before considering expansion or the creation of a new trail or facility. For each program, the property manager will define in writing any special privileges or conditions that may be accorded to volunteers.

L. Concessionaires

A person must not engage in a concession or other business, except as approved by the DNR. 312 IAC 8-2-14(b). This restriction applies to the on-site rental of horses for use on a DNR property.

M. Education

When practicable, the DNR shall provide users with information on the impacts of recreational use, methods of minimizing negative impacts, trail ethics, and natural resource information.

N. Property Closures

A division director may temporarily close a DNR property to horse use. The department director may permanently close a DNR property to horse use. The closure would be based on resource protection, public input, and public safety.

With approval of the immediate supervisor, a property manager may temporarily or permanently close an individual trail, segment of a trail, or other facility on a DNR property. The closure may be for maintenance, inclement weather to prevent trail damage, because a trail cannot be brought to current standards, rotational to all recovery from damage, or to protect ecologically sensitive areas.

All closures shall be accompanied by efforts to minimize the negative impacts on the recreational opportunities of all users.

Appendix A

Overview of Trail Density and Equine Carrying Capacity

The decision to establish minimum trail density and maximum equine carrying capacity as part of the policy for "Horses on DNR Properties" was based on two factors. First, the long-term observations of many resource managers indicate that at certain times in certain locations, horse use caused ecologically unacceptable changes in the natural resources. Second, many recreational horse users believed that crowding and frequent contact among users caused a diminished recreational experience.

Trail density was established with a concentric, two-tiered design. High density areas are defined as encompassing an area of state-owned land, excluding special concern areas, within a one mile radius of a horse campground or designated horse day use parking area. The high density maximum of 4.5 miles of trail per 640 acres reflects a management decision to assign horse use a somewhat higher status in relation to other uses in these areas. A density in excess of 4.5 miles per 640 acres would not allow the necessary latitude for trail design and location to prevent unacceptable changes in natural resources. Low trail density areas are defined as those areas of state owned land, excluding special concern areas, that lie outside the high density areas. The low density maximum of 2.5 miles of trail per 640 acres reflects that horse use is only one of many uses on most properties. The low density maximum also indicates the dispersion factor as the trails move farther from high density areas.

These trail density figures coincide with the upper limits of trail density proposed by the United States Forest Service for the Hoosier National Forest. These trail density guidelines may need to be altered in the future if this level of use produces unacceptable changes, or if research data shows over time that additional use would not cause unacceptable impacts.

The Equine Carrying Capacity of a property is here derived from the miles of trail available for riding. The number of horses allowed per mile of trail is a function of two different factors. The first is the physical impact each horse has on the natural resources. These include soil, water, vegetation, and similar resources. The second is the frequency with which riders wish to encounter each other on the trail.

The physical impact of each horse on natural resources is dependent on many different factors. Included are weather, slope, soil type, trail condition, and similar factors. These are not yet well quantified; however, it has been observed that those trail systems that routinely have several riders per mile per day show substantial impacts.

Results from the trail riding respondents to the 1993 Horse Use Opinion Survey indicated they rode an average of about eight miles a day, and a majority preferred to encounter five or fewer other groups during the ride. The average group size was from two to six people. To accommodate this number of encounters would require somewhat less than one group per mile of trail. Ten horses per mile of trail would be the maximum to provide the desired recreational opportunity. As with trail density, the carrying capacities may need to be adjusted in the future after additional information is collected.

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #28
SALES TAX
JANUARY, 2005**

(Replaces Information Bulletin #28 dated July, 2004)

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: Sales & Leases of Motor Vehicles, Trailers and Watercraft

REFERENCES: IC 6-2.5-1-5, IC 6-2.5-1-6, IC 6-2.5-2-2, IC 2.5-3-6, IC 6-2.5-3-7, IC 6-2.5-4-10, IC 6-2.5-13-1

INTRODUCTION

The sale or lease of any motor vehicle, trailer or watercraft shall be subject to the sales/use tax unless such transaction is entitled to a statutory exemption as shown on Form ST-108E.

If the vehicle, trailer or watercraft is purchased or leased from a registered Indiana motor vehicle, trailer or watercraft dealer, the dealer must collect sales tax and provide to the purchaser a completed Form ST-108 showing that the tax has been paid. If the purchaser claims exemption and tax is not 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. Form ST-108 must be attached to the Department of Revenue copy of the title application by the license branch personnel. When a purchaser claims an exemption on Form ST-108E, the dealer must retain a completed exemption certificate in the dealer's records to document the exempt sale or lease. Form ST-105D may be used to document dealer-to-dealer exempt sales for resale.

Effective July 01, 2004 all motor vehicles, trailers and watercraft purchased or leased in Indiana are subject to Indiana sales tax. This includes sales or leases to be immediately registered, licensed or titled for use in another state.

I. AMOUNT SUBJECT TO TAX

A. REBATES VERSUS VARIOUS OTHER FORMS OF DISCOUNTS

The dealer's actual selling price, for which the dealer receives gross retail income, is the amount subject to sales tax. **A rebate is not an allowable deduction from the taxable selling price if the dealer receives payment for such rebate, as shown on the customer's purchase or lease agreement.** A manufacturer's rebate, as shown on the written purchase or lease agreement with a customer, is a form of payment. It is not a reduction in the dealer's selling price.

Regardless of terminology used, the amount subject to tax is based upon whether or not the selling price is reduced. Even though a dealer receives payment from the manufacturer for a rebate shown on the written purchase agreement, it does not reduce the selling price. The dealer's selling price is the amount subject to sales tax, not the amount actually paid by the customer.

Any adjustment to the list price shown on a customer's purchase agreement for which the dealer receives payment or credit from a third party is to be treated as a payment and is not a reduction of the taxable selling price. Such amounts are not deductible from the taxable selling price, regardless of the terminology shown on the purchase agreement.

Note: Customers often do not know if a dealer receives payment for any particular type of adjustment shown on their purchase agreement. Dealers do know if any adjustment shown is paid by a third party and must show these types of adjustments as payment applications, not reductions of the taxable selling price.

B. TRADE-IN ALLOWANCE

The deduction for a trade-in allowance applies only to "like-kind exchanges" where the vehicle, trailer or watercraft to be traded-in is **owned and titled** in the name of the customer. A like-kind exchange means a motor vehicle for another motor vehicle, a trailer for another trailer or a watercraft for another watercraft. A trade-in of a vehicle for a trailer or watercraft is not a "like-kind exchange," and is not deductible in the calculation of the amount of the taxable gross retail income received by the dealer. **Only motor vehicles traded for other motor vehicles, trailers traded for other trailers, or watercraft traded for other watercraft are deemed to be "like-kind exchanges" exempt from the sales tax.** A deduction is not available for other property, either personal or real, which is traded for a vehicle. All other type trade-in values are taxable and includable as part of the taxable retail income received by the dealer. Non-like-kind exchanges are another form of the taxable retail payment to the dealer which does not reduce the dealer's selling price.

Trade-In Value for Sales

Like-kind exchanges (trade-in value) applied toward the purchase price for the sale of a motor vehicle, trailer or watercraft are not reduced by any amounts represented by an encumbrance of any kind. The gross trade-in value is deductible from the taxable selling price for sales tax purposes.

Trade-In Value for Leases

Like-kind exchanges (trade-in value) applied as a capital cost reduction resulting from the trade-in equity of an owned vehicle are deductible from the taxable gross retail income for sales tax purposes. Equity is defined as the gross trade-in value less any

encumbrance (lien) on the trade.

C. DOCUMENTATION FEES

Documentation fees for services performed **after the transfer** of the vehicle, trailer or watercraft are not considered part of the sales price and, therefore, are not subject to sales tax. Transfer of a vehicle, trailer or watercraft takes place when the purchaser takes possession and control of the property and assumes the risk of loss, even though title has not yet been transferred. 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, trailer or watercraft to be exempted from sales tax. Documentation fees charged for services performed **prior to the customer taking physical possession** of the vehicle, trailer, or watercraft are subject to sales tax.

II. SALES - EXAMPLES OF TAXABLE SELLING PRICE {T=Taxable; E=Exempt}

A.	(1) Sticker List Price	\$12,000 T
	(2) Dealer Discount	\$500 E
	(3) Trade-In Value	\$4,000 E
	(4) Taxable Selling Price	\$7,500

The dealer discount (2) is a reduction in selling price and is an allowable deduction from the amount subject to tax. Item (3) is consideration received by the seller; however, per statute, it is deductible from the amount subject to sales tax. Taxable selling price is (1) minus (2) minus (3).

B.	(1) Sticker List Price	\$12,000 T
	(2) Dealer Discount	\$500 E
	(3) Trade-In Value	\$4,000 E
	(4) Mfg Rebate Paid Direct to Customer	\$1,000
	(5) Taxable Selling Price	\$7,500

Items (2) and (3) reduce the amount subject to sales tax. Item (4) does not reduce the amount subject to sales tax. Note that in this example the rebate is paid to the customer, not the dealer. Compare this example to Example C below. These examples show that regardless who receives the rebate, it does not reduce the taxable selling price of the vehicle. Taxable selling price is (1) minus (2) minus (3).

C.	(1) Sticker List Price	\$12,000 T
	(2) Dealer Discount	\$ 500 E
	(3) Trade-In Value	\$ 4,000 E
	(4) Mfg Rebate paid to Dealer	\$ 1,000
	(5) Taxable Selling Price	\$ 7,500

Item (2) is a reduction from the selling price per statute. Item (3) is consideration received by the seller; however, per statute, it is deductible from the amount subject to sales tax. The manufacturer rebate (4), paid to the seller by the manufacturer, is not an allowable deduction from the taxable selling price of the vehicle. Taxable selling price is (1) minus (2) minus (3).

D.	(1) Sticker List Price	\$12,000 T
	(2) Discount	\$ 500 E
	(3) Trade-In Value	\$ 4,000 E
	(4) Mfg Cost Reduction (not paid to dealer)	\$ 1,000 E
	(5) Taxable Selling Price	\$ 6,500

Items (2) (3) and (4) are all allowable as a reduction of the amount of gross retail income subject to sales tax. Items (2) and (4) are true selling price reductions since the seller does not receive any payment. Item (3) is consideration (payment) received by the seller; however, like-kind exchanges (trade-in) are allowable as a reduction of the selling price subject to tax per Indiana Code. Taxable selling price is (1) minus (2) minus (3) minus (4).

III. LEASES

The lease of any motor vehicle, trailer or watercraft shall be subject to the sales/use tax unless such transaction is entitled to a statutory exemption as shown on Form ST-108E.

All amounts received as consideration by a dealer or lessor are subject to sales tax with the exception of the value of an owned vehicle exchanged as a trade-in by the lessee. **All monies received at the origination of the lease that represent down payments, rebates, initial payments, first month's lease, etc., collected by a dealer or lessor are subject to the Indiana sales tax.** The deduction for a trade-in allowance applies only to vehicles, trailers or watercraft traded-in that are owned (titled) by the customer. There is no deduction available for other property, either personal or real, which is exchanged for a vehicle, trailer or watercraft. All other types of exchanges are taxable.

Customers (lessees) should understand that when a vehicle is leased there are two separate, but related, transactions. The dealer "sells" the vehicle to a leasing or finance company and at the same time originates a lease arrangement between the lessor (leasing/finance company) and the lessee (customer).

The term “capitalized cost” or “capital cost” is an accounting term used by the vehicle leasing industry to describe the actual selling price of the vehicle from the dealer to the leasing or finance company. The customer’s (lessee’s) monthly lease payment is materially affected by how much the leasing or finance company pays for the vehicle (capitalized cost). The dealer not only receives consideration (payment) from the customer, but many times receives payment from the manufacturer in the form of a rebate. The consideration received are examples of “capital cost reductions.”

LESSEE PURCHASE AT END OF LEASE – If a lessee exercises a purchase option at the end of their lease, all monies paid by the lessee upon termination of the lease, including excess mileage fees, are subject to sales tax.

IV. TAXABLE LEASE AMOUNTS

A **manufacturer’s rebate** based upon the lease of a vehicle is not considered deductible for sales tax purposes. For sales tax purposes, a rebate paid to the dealer is deemed to be “gross retail income” and thus is not deductible from the amount subject to Indiana sales tax. **Sales tax is based upon retail income received by the seller, not amounts paid by the lessee.** It does not matter if the lessee has the option of receiving the rebate in cash, or assigning the rebate to the dealer to be applied as a capital cost reduction on the lease of a vehicle. The character of the rebate remains taxable. In either situation the total selling price of the vehicle and amount of gross retail income received by the dealer are identical. Indiana Code 6-2.5-1-5 defines gross retail income for sales tax purposes to include the total gross receipts, of any kind or nature, received in a retail transaction by a retail merchant.

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 for the lease.

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 lease.

All types of discounts, regardless of the terminology used to describe the price adjustment, are either taxable or exempt based upon whether the selling dealer receives “gross retail income” for the sale or lease of a vehicle.

V. EXAMPLES OF TAXABLE LEASE AMOUNTS

A. New Vehicle Lease – Customer Trades in Vehicle Titled in Customer’s Name {T=Taxable; E=Exempt}

1. Value of owned vehicle trade	\$15,000
2. Customer’s Loan Balance	(10,000)
3. Equity in owned vehicle	\$ 5,000 E
4. Cash paid by customer	\$ 8,000 T
5. Total Payment applied	\$13,000
6. First month lease payment	\$ 400 T
7. Amount Subject to Sales Tax at Lease Origination	\$ 8,400

In the above example the dealer receives a total gross retail income of \$13,400. Only \$8,400 is subject to sales tax. The net equity of the owner trade-in (3) is used to reduce the capitalized cost (selling price) of the leased vehicle and is not subject to tax. Indiana statute exempts this “payment” towards the selling price if the vehicle being traded is “titled” to the customer initiating the lease. The cash payment (4) and the first month’s lease payment (6) collected by the dealer are subject to the Indiana sales tax.

B. New Vehicle Lease – Customer Trades in Vehicle Titled in Customer’s Name and has a Manufacturer’s Rebate.

1. Value of owned vehicle trade	\$15,000
2. Customer’s Loan Balance	(10,000)
3. Equity in owned vehicle	\$ 5,000 E
4. Cash paid by customer	\$ 1,500 T
5. Manufacturer Rebate	\$ 2,000 T
6. Total Payment applied	\$ 8,500
7. First month lease payment	\$ 400 T
8. Amount Subject to Sales Tax at Lease Origination	\$ 3,900

In this example the dealer receives \$8,900 (3+4+5+7) for the lease of this vehicle. The net equity of the owner trade-in (3) is exempt from sales tax provided the vehicle being traded is titled in the customer’s name and is applied as a capital cost reduction. Items 4 + 5 + 7 are taxable.

C. New Vehicle Lease – Customer Trades in Vehicle NOT Owned/Titled in Name of Customer at End of Lease Term

1. Value of lessee vehicle	\$ 12,000
2. Lessee’s optional buy out	(10,000)
3. Allowance for lessee auto	\$ 2,000 T
4. Cash paid by customer	\$ 3,000 T
5. Manufacturer’s Rebate	\$ 2,000 T

6. Total Payment applied	\$ 7,000
7. First month lease payment	\$ 400 T
8. Amount Subject to Sales Tax at Lease Origination	\$ 7,400

Dealer exercised option to purchase leased vehicle direct from leasing company. Trade-in was titled to leasing company, not the customer, thus is not an exempt trade per Indiana statute. In the above example, the dealer receives as retail income a total of \$7,400. The entire amount of retail income is subject to the Indiana sales tax. (3+4+5+7)

D. New Vehicle Lease – Customer Receives Manufacturer’s Rebate, Manufacturer’s Price Reduction and a Dealer Price Discount.

1. Manufacturer’s Rebate	\$ 3,500 T
2. Manufacturer’s Cost Reduction (not paid to dealer)	\$ 2,000 E
3. Dealer Price Discount	\$ 2,000 E
4. Cash paid by customer	\$ 3,000 T
5. First month lease payment	\$ 400 T
6. Amount Subject to Sales Tax at Lease Origination	\$ 6,900

Items (2) and (3) are both exempt from sales tax since the dealer does not receive any “gross retail income.” Items (1),(4) and (5) are subject to the Indiana sales tax. The amounts are not deductible from taxable gross retail income.

E. New Vehicle Lease – Entire Lease is Prepaid by Lessee at Origination

1. Manufacturer’s Rebate	\$ 2,000 T
2. Dealer Price Discount	\$ 1,000 E
3. 3 Year Lease Prepaid by lessee	\$10,500 T
4. Amount Subject to Sales Tax at Lease Origination	\$12,500

The entire lease proceeds (1) and (3), paid at lease origination to the dealer, are subject to the Indiana sales tax regardless of residency of the customer. The fact that the lessee may later register/plate the vehicle in another state does not change the fact that Indiana sales tax is due on this transaction.

VI. LEASES FROM INDIANA DEALERS TO NONRESIDENTS

If a vehicle is leased from a registered Indiana motor vehicle, trailer or watercraft dealer, the dealer must collect the applicable sales tax and provide to the purchaser a completed Form ST-108 showing the amount of tax collected. If the purchaser claims exemption and tax is not collected by the dealer, the statement at the bottom of Form ST-108E must be completed and signed by the purchaser. When a purchaser claims an exemption on Form ST-108E, the dealer must retain a copy of the completed exemption certificate to document the exempted lease transaction. Exemption Form ST-105D may be used to document “dealer to dealer” sales for resale.

Motor vehicle leases initiated 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.

A dealer leasing to a **nonresident** must collect Indiana sales tax on all gross retail income items as defined by Indiana statute, including any advance lease payments tendered. Only the value of a vehicle trade-in applied as a capital cost reduction, titled in the name of the customer/lessee, is entitled to an exemption. All future periodic lease payments collected by the lessor **after transfer** of the vehicle, trailer or watercraft shall be subject to sales tax based upon the state where the property is located. Exemption from the sales tax will not be allowed except for the reasons listed on Form ST-108E.

Residency of the lessee (customer) does not determine the application of Indiana sales tax to a lease. **Indiana** sales tax is due on all “gross retail income” received by an Indiana dealer at the time of lease origination. The “stream” or “flow” of each lease payment determines if Indiana sales tax is due on a lease. All upfront monies paid at the time of a lease origination, regardless of the future location of the leased vehicle, are subject to **Indiana** sales tax. The lessor (leasing or finance company) will collect the appropriate sales tax on later periodic lease payments based upon where the vehicle is registered.

Example: A resident of another state initiates a new lease from an Indiana dealer. The nonresident lessee intends to register/plate the leased vehicle outside Indiana. The Indiana dealer is responsible for collection of the **Indiana** sales tax on all “gross retail income” received upon the origination of the lease. Once the vehicle is registered in another state, the lessor (leasing company or financial company) will collect that states’ sales tax on each periodic monthly lease payment based upon the location where the vehicle is registered.

Borderline Nonresident Example #1

Illinois, Kentucky or Ohio Resident Initiating a Lease from an Indiana Dealer

Illinois, Kentucky and Ohio statutes require sales tax to be paid by the lessor (leasing or finance company) on the lessor’s full purchase price of the vehicle at the lease inception. Indiana statute differs in that it requires sales tax to be collected based upon the stream of periodic lease payments. In this example a vehicle has a manufacturer’s rebate used as a capitalized cost reduction and the customer makes the first monthly payment to the dealer at the time of lease inception. The dealer must collect Indiana’s sales tax on the manufacturer’s rebate amount and the first month’s lease payment. In this example, the Indiana dealer is required by the lessor

to apply for title in Illinois. Dealer computes Indiana sales tax on monies tendered upon lease origination and completes Form ST-108 disclosing amounts of Indiana sales tax collected.

Borderline Nonresident Example #2**Michigan Resident Initiates a lease from an Indiana Dealer**

In this example both Michigan and Indiana collect sales tax on the stream of periodic lease payments. The vehicle has a manufacturer's rebate used as a capitalized cost reduction and the customer makes the first monthly payment to the dealer at the time of lease origination.

- a) The Indiana dealer must collect Indiana's sales tax on the manufacturer's rebate amount received by the dealer and the first month's lease payment.
- b) The lessor will collect sales tax on future periodic lease payments based upon the location of the leased vehicle, presumably Michigan in this example.

Additional information pertaining to sales tax concerning vehicles, trailers and watercraft is found on the Department's website at www.in.gov/dor. Click on: Businesses; click on: Frequently Asked Questions; click on: Auto Dealers.

Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE

04-980213.LOF

LETTER OF FINDINGS: 98-0213**Indiana Gross Retail Tax****For the Years 1993, 1994, 1995, and 1996**

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.

ISSUES**I. Purchase of Display Booths from Ohio Vendor – Use Tax.**

Authority: IC 6-8.1-5-1; IC 6-8.1-5-1(b); 45 IAC 2.2-3-4.

Taxpayer argues that the audit review incorrectly assessed gross retail tax on the purchase of display booths which were purportedly shipped from an Ohio vendor to another location in Ohio.

II. Computer Software Updates – Use Tax.

Authority: IC 6-2.5-3-2(a); Sales Tax Information Bulletin #2 (May 2002); Sales Tax Information Bulletin #8 (May 2002); Sales Tax Information Bulletin #2 (August 1991); Sales Tax Information Bulletin #8 (February 1990).

Taxpayer maintains that the audit erred when the audit concluded that the purchase of computer software upgrades was subject to Indiana's gross retail tax.

III. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer argues that the Department should exercise its authority to abate the ten-percent negligence penalty assessed at the time of the original 1997 audit.

STATEMENT OF FACTS

Taxpayer is in the banking business and has a number of banking locations within the state. In 1997, the Department of Revenue (Department) conducted an audit review of taxpayer's business records for the purpose of determining whether taxpayer had paid sales tax on taxable transactions or, in the alternative, had self-assessed use tax on those items for which sales tax had not been paid. Because of the sheer number of potential transactions, the parties agreed to use a sampling method to determine the amount of additional use tax owed. The audit determined that taxpayer owed additional use tax. Later in 1997, taxpayer submitted a protest concerning certain of the assessments. The file was assigned for a hearing in 2004. After being contacted, taxpayer's representative indicated that the only remaining issue was the ten-percent negligence penalty and that a determination of whether or not to abate the penalty should be based upon the information contained within the original audit report and the 1997 protest letter. Subsequently, taxpayer decided that it wanted two specific, substantive issues addressed within the Letter of Findings. Therefore, this Letter of Findings addresses both the two substantive issues and the penalty assessment.

DISCUSSION**I. Purchase of Display Booths from Ohio Vendor – Use Tax.**

In reviewing taxpayer's invoices, the audit took note of a 1995 invoice for the purchase of display booths. The invoice stated that taxpayer had bought these booths from an Ohio vendor and had paid Ohio sales tax. This was evidenced by the fact that sales tax had been assessed at the Ohio rate of 5.75 percent. Because this was the audit of an Indiana taxpayer, the audit determined that taxpayer should have paid Indiana sales tax; accordingly, the audit assessed additional use tax.

Taxpayer argues that these particular display booths were shipped from the Ohio vendor to an Ohio location and that because the booths were never delivered into Indiana, that taxpayer had no initial obligation to pay sales tax to Indiana or to thereafter self-assess Indiana use tax. In support of that contention, taxpayer has supplied a copy of its purchase order with the Ohio vendor indicating that “each requested shipment will have a release issued showing quantities ship to location and invoicing address.” According to taxpayer, this purchase order is sufficient to establish that the 1995 invoice was for the purchase of display booths shipped from the Ohio vendor to an Ohio location.

45 IAC 2.2-3-4 states as follows:

Tangible personal property, purchased in Indiana, or *elsewhere* in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the *Indiana state gross retail tax* has been collected at the point of purchase. (*Emphasis added*).

What 45 IAC 2.2-3-4 means is that if an Indiana buyer purchases an item from an out-of-state seller and then arranges for delivery of that item into Indiana, the Indiana buyer must self-assess use tax unless it paid Indiana sales tax to the out-of-state seller. This explains why the audit imposed use tax on the 1995 purchase of the display booths; it was evident from the face of the 1995 invoice that – although taxpayer paid Ohio sales tax to the Ohio vendor – taxpayer did not pay Indiana sales tax.

In support of its argument that the booths were shipped to an Ohio location, taxpayer has provided a copy its purchase order with that vendor. However, that particular purchase order – although with the same Ohio vendor – is from 1997. Although the purchase order is also for display booths, the base sales amount is different from that indicated on the 1995 invoice. Therefore, the 1997 purchase order is not dispositive on the question of whether the display booths purchased in 1995 were shipped to an Ohio location. If taxpayer has provided the 1997 purchase order to establish evidence of the normal commercial practices between itself and the Ohio vendor, the purchase would seem to simply establish that taxpayer periodically contracted with the Ohio vendor to purchase display booths and to ship those booths to different locations. The purchase order does nothing to establish the 1995 transaction resulted in the delivery of *these* display booths to a location outside Indiana.

IC 6-8.1-5-1 states that, “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b). Taxpayer has not met its burden of demonstrating that the 1995 invoice was for the purchase of items shipped by the Ohio vendor to an Ohio location. The audit was correct in concluding that the 1995 purchase of display booths was subject to Indiana’s use tax. Although taxpayer may have paid Ohio sales tax on this identical 1995 transaction, taxpayer’s quarrel is with the state of Ohio and not with Indiana.

FINDING

Taxpayer’s protest is respectfully denied.

II. Computer Software Updates – Use Tax.

In reviewing taxpayer’s invoices, the audit found that taxpayer failed to pay sales tax on “software maintenance fees.” Therefore, the audit assessed use tax on those purchase. Taxpayer states that the assessment of use tax is unwarranted because the purchase was for computer “updates.”

IC 6-2.5-3-2(a) provides that “An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of the transaction or of the retail merchant making that transaction.” The Department has determined that the purchase of computer updates constitutes a retail transaction in which the buyer acquires tangible personal property.

Pre-written programs, not specifically designed for one purchaser, developed by the seller for sale or lease on the general market in the form of tangible personal property and sold or leased in the form of tangible personal property are subject to tax irrespective of the fact that the program may require some modification for a purchaser’s particular computer. Pre-written or canned computer programs are taxable because the intellectual property contained in the canned program is no different than the intellectual property in a videotape or a textbook. Sales Tax Information Bulletin #8 (May 2002); *See also Sales Tax Information Bulletin #8* (February 1990).

The particular updates of which taxpayer complains were obtained by virtue of a maintenance agreement. However, whether or not the updates were obtained pursuant to the terms of a maintenance agreement does not resolve the issue of whether the *updates* were subject to Indiana’s gross retail tax. “Optional warranties and maintenance agreements that contain the right to have property supplied in the event it is needed are not subject to sales tax. Any parts or tangible personal property supplied pursuant to this type of agreement are subject to use tax.” Sales Tax Information Bulletin #2 (May 2002); *See also Sales Tax Information Bulletin #2* (August 1991).

Depending upon the nature of the agreement, maintenance contracts may or may not be subject to gross retail tax. *Id.* However, this is not the issue raised by taxpayer. It is taxpayer’s contention that computer “updates” are not subject to the tax. Taxpayer errs because the updates were simply “canned” computer software which constitutes tangible personal property pursuant to IC 6-2.5-3-2(a). Taxpayer has not met its burden of demonstrating that the computer updates were not subject to the state’s gross retail tax.

FINDING

Taxpayer’s protest is respectfully denied.

III. Abatement of the Ten-Percent Negligence Penalty.

Following the 1997 audit, the Department assessed the ten-percent negligence on the ground that “numerous items where sales tax was not paid or use tax were accrued were missed.” In its 1997 protest letter, taxpayer asked that the penalty be abated because of “reasonable cause” and the assurance that “[p]rocedural changes have since been implemented that require consistent adherence to tax law....”

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer’s negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as “the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.” Negligence is to “be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.” *Id.*

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on “reasonable cause and not due to willful neglect.” Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish “reasonable cause,” the taxpayer must demonstrate that it “exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed....”

Without excusing the taxpayer’s initial failure to produce the required documents at the time of the 1997 audit review or the failure to appropriately self-assess use taxes on all of its 1993 through 1996 transactions, the Department concludes that taxpayer’s failure to exercise “ordinary business care” does not necessitate imposition of the negligence penalty. The penalty should be abated in its entirety.

FINDING

Taxpayer’s protest is sustained.

DEPARTMENT OF STATE REVENUE

04990379.LOF

LETTER OF FINDINGS NUMBER: 99-0379

Sales and Use Tax

For Tax Years 1996 through 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUE

I. Sales and Use Tax—Liability for taxes

Authority: IC 6-8.1-5-1

Taxpayer protests that it is not liable for sales and use taxes.

STATEMENT OF FACTS

Taxpayer was an out of state business which operated as a construction contractor in Indiana during the tax period. The Indiana Department of Revenue (“Department”) conducted an audit and as a result issued proposed assessments for sales tax and use tax. Taxpayer protested a portion of these assessments on the grounds that either another taxpayer was liable, or that it paid sales tax to another state. Further facts will be supplied as necessary.

I. Sales and Use Tax—Liability for taxes

DISCUSSION

Taxpayer operated a construction contracting business in Indiana during the tax period at issue. The Department conducted an audit and issued proposed assessments for sales tax and use tax. Taxpayer made a broad protest of the assessments on the grounds that it paid sales tax to other states or other taxpayers should be liable for the taxes. Despite repeated attempts by the Department to get a detailed protest and supporting documentation, none was forthcoming. When an administrative hearing was scheduled, the hearing officer was informed that taxpayer no longer wanted a hearing, that taxpayer was going out of business and that a fire had destroyed most of taxpayer’s records.

The relevant statute is IC 6-8.1-5-1(b), which states in relevant part:

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.

In this case, taxpayer has not made anything more than a general protest, and has not provided any documentation supporting its position. Such documentation could have been provided at any time during the audit or when the protest was initiated. That the documentation may have been destroyed before the administrative hearing is not persuasive. Taxpayer has not met its burden of proving the proposed assessments wrong, as provided in IC 6-8.1-5-1(b).

FINDING

Taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE

02-20000487.LOF

LETTER OF FINDINGS NUMBER: 00-0487**Gross Income Tax and Penalty****For the Years 1995-1996**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Gross Income Tax - Out-of-state sales**

Authority: 45 IAC 1-1-119; *Indiana Dept. of State Revenue v. Bendix Aviation Corp.*, 143 N.E.2d 91, 237 Ind. 98 (Ind. 1957)

Taxpayer protests the Department's assessment of gross income tax with respect to government sales that were received by the government outside Indiana.

II. Penalty - Request for waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the Department's imposition of the 10% negligence penalty, requesting a waiver for reasonable cause.

STATEMENT OF FACTS

Taxpayer, a corporation engaged in the sale of military items, produced items for sale to the federal government. The items were produced in Indiana, with the federal government inspecting and accepting the items in Indiana; however, the items were shipped outside Indiana, and Taxpayer assumed the risk of loss until the items had reached their ultimate destination. Taxpayer was assessed gross income tax and penalty with respect to these sales. Taxpayer has protested the assessment, claiming that the sale occurred in interstate commerce.

I. Gross Income Tax - Out-of-state sales**DISCUSSION**

Taxpayer argues that the Department seeks to impose gross income tax on government sales that were shipped ultimately to out-of-state locations. In particular, a normal contract would work in the following manner: Taxpayer would produce goods in Indiana for sale to the federal government. The sales were inspected and accepted in Indiana; however, Taxpayer assumed risk of loss until the goods were actually received by the government at out-of-state locations.

Taxpayer maintains that the fact that Taxpayer assumed risk of loss for any goods until the government actually took physical possession of those goods exempted those goods from gross income tax based on 45 IAC 1-1-119 (repealed December 30, 1998), which provides that a sale from an Indiana seller and shipped to an out-of-state buyer is exempt from gross income tax unless the sale in question is completed in Indiana. Taxpayer cites to federal shipping guidelines that provide risk of loss or damage remains with Taxpayer until they are received at the government destination. However, formal title of the goods by terms of the same guidelines passes when the goods are inspected and accepted by the federal government.

On point is the case of *Indiana Dept. of State Revenue v. Bendix Aviation Corp.*, 143 N.E.2d 91, 237 Ind. 98 (Ind. 1957). In that case, a defense contractor sold products manufactured at an Indiana plant to the federal government. The goods were to be shipped via carrier designated by the federal government. The federal government accepted the goods at the South Bend location, even though the goods were to be ultimately shipped to out-of-state locations. The court held that the transactions in question occurred entirely in Indiana. *Id.* at 96, 239 Ind. at 109. Accordingly, the transactions were subject to gross income tax. *Id.* at 99, 239 Ind. at 114.

Here, Taxpayer has acknowledged that the goods were inspected and accepted in Indiana. While the risk of loss remained with Taxpayer, formal transfer of title of the items in question occurred in Indiana, just as the goods in *Bendix Aviation* were accepted by the government in Indiana. Accordingly, the transactions by Taxpayer were completed in Indiana and are subject to Indiana gross income tax.

FINDING

Taxpayer's protest is denied.

II. Penalty - Request for waiver**DISCUSSION**

Taxpayer protests the imposition of the 10% negligence penalty on the entire assessment. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due.

Indiana Code Section 6-8.1-10-2.1(d) states that if a Taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. In addition, the relevant Department regulation, 45 IAC 15-11-2, defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable Taxpayer. Negligence results from a Taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the Taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, Taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by “demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed....” In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has provided sufficient information to conclude that the Taxpayer acted with reasonable care, rather than negligently, and accordingly the penalty should be waived.

FINDING

Taxpayer’s protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20020086.LOF

LETTER OF FINDINGS NUMBER: 02-0086

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—Maintenance Agreements

Authority: Sales Tax Information Bulletin #2 (August 1991); 45 IAC 2.2-4-2; IC 6-8.1-5-1

Taxpayer protests the imposition of gross retail tax on transactions performed under maintenance agreements that taxpayer has with third parties.

II. Sales/Use Tax—Software Maintenance Agreements

Authority: Sales Tax Information Bulletin #2 (August 1991)

Taxpayer protests the imposition of gross retail tax on services and software upgrades performed under software maintenance agreements that taxpayer has with third parties.

III. Sales/Use Tax—Sale of Telecommunication Services to Public Utilities

Authority: Sales Tax Information Bulletin #51T (January 2003); IC 6-2.5-4-6(b)

Taxpayer protests the imposition of gross retail tax on satellite feeds sold to taxpayer as a provider of telecommunication services.

IV. Sales/Use Tax—Rental Agreements Exceeding 30 Days

Authority: IC 6-2.5-4-4; 45 IAC 2.2-4-8(b)

Taxpayer protests the imposition of gross retail tax on storage unit rental costs for property rented for a period exceeding 30 days.

V. Sales/Use Tax—Proof of Sales Tax Paid

Authority: none

Taxpayer protests the imposition of gross retail tax on items for which an invoice demonstrates that sales tax has previously been paid.

VI. Sales/Use Tax—Use Tax Accrued

Authority: none

Taxpayer protests the imposition of gross retail tax on transactions for which use tax has already been accrued.

VII. Sales/Use Tax—Bulk Mailing

Authority: none

Taxpayer protests the imposition of gross retail tax on bulk mailing transactions.

STATEMENT OF FACTS

Throughout the year, taxpayer purchased tangible personal property and services, along with maintenance agreements that accompanied some of the tangible personal property. Some of these purchases were picked up on audit as being subject to gross retail tax for various reasons.

DISCUSSION

I. Sales/Use Tax—Maintenance Agreements

Taxpayer protests the assessment of use tax on items that taxpayer has labeled maintenance agreements. Taxpayer has provided the Department with invoices and copies of canceled checks that indicate payment for the service. While the canceled checks provide little assistance in determining the nature of the transaction in question, the invoices state that the payment is for a maintenance

agreement. However, these invoices fail to clearly demonstrate whether or not taxpayer is paying for services or tangible personal property used in fulfilling the contract.

Maintenance agreements that also contain provisions for periodic services where tangible personal property will be supplied as a part of the unitary price fall within the ambit of 45 IAC 2.2-4-2. Sales Tax Information Bulletin #2 (August 1991).

45 IAC 2.2-4-2 reads:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not “transactions of a retail merchant constituting selling at retail”, and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

(1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;

(2) The tangible personal property purchased is used or consumed as a necessary incident to the service;

(3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and

(4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

It is therefore essential to the disposition of the matter that the service agreements be available for inspection to determine their nature. Because taxpayer has not complied with repeated requests to produce these agreements, it is therefore impossible to determine their nature and therefore determine if tangible personal property was contemplated to be transferred during the servicing of the various items for which maintenance agreements were entered.

The notice of proposed assessment is *prima facie* evidence that the Department’s claim for unpaid tax is valid, and the burden of proof that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC 6-8.1-5-1.

Taxpayer has not produced sufficient evidence to rebut the Department’s assessment.

FINDINGS

The taxpayer is respectfully denied.

II. Sales/Use Tax—Software Maintenance Agreements

DISCUSSION

Similar to the maintenance agreements above, taxpayer has entered into a software maintenance agreement with a third party. However, unlike the above maintenance agreements, taxpayer has submitted the software maintenance agreement for inspection by the Department.

The agreement calls for the third party to “furnish and license Customer (taxpayer) with upgraded versions of the software licensed to (taxpayer) under the ... (c)ontract. Such upgrades shall be delivered at such time as they are generally made available by (c)ompany (third party) to its (c)ustomers.”

Sales Tax Information Bulletin #2 states:

Optional extended warranties and maintenance agreements are offered as a separate added amount to the purchase price of property being sold and a fixed sum is charged for the furnishing of tangible personal property throughout the term of the warranty or the agreement. Optional warranties and maintenance agreements are not subject to sales or use tax. 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 property supplied and there is no certainty that property will be supplied. However, if the agreement includes a charge for property to be periodically supplied the agreement would be subject to tax.

At first blush, it seems that the agreement calls for the third party to regularly supply taxpayer with upgrades, taking it out of the realm of the optional extended warranty exemption. However, because the contract makes no guarantees that upgrades will ever be produced by the third party, taxpayer has merely purchased an intangible right to have property supplied should the third party decide to upgrade its software.

FINDINGS

The taxpayer is sustained.

III. Sales/Use Tax—Sale of Telecommunication Services to Public Utilities

DISCUSSION

Taxpayer has been assessed gross retail tax on its purchase of satellite transmissions from a third party and has protested this assessment. Taxpayer claims that, according to Sales Tax Information Bulletin #51T (January 2003), “the sale of telecommunication services to public utilities or any provider of telecommunication services are (sic) not subject to sales or use tax.” Taxpayer is a broadcaster and not a provider of telecommunication services and the exemption discussed in Tax Information Bulletin #51T does not apply. Additionally, taxpayer is the recipient of the telecommunication services contemplated in IC 6-2.5-4-6(b):

(b) A person is a retail merchant making a retail transaction when the person:

(1) furnishes or sells an intrastate telecommunication service; and

(2) receives gross retail income from billings or statements rendered to customers.

The transmissions at issue appear to be interstate in nature and are therefore not subject to tax.

FINDINGS

The taxpayer is sustained.

IV. Sales/Use Tax—Rental Agreements Exceeding 30 Days**DISCUSSION**

Taxpayer was assessed sales tax based on the leasing of accommodations (45 IAC 2.2-4-8(b)) for a transaction in which taxpayer rented a storage unit at a self-storage facility from a third party. There is no indication that human beings ever occupied the storage unit, and the term “storage unit” implies that the space is not being utilized, nor is it fit for being utilized, as space intended for occupancy by human beings. The storage unit rental is the rental of real property, thus it is not considered tangible personal property per IC 6-2.5-4-4 and therefore falls outside of the regulation.

Therefore, inasmuch as the storage space is real property and not an accommodation, the Department has no legal basis for assessing tax on its rental.

FINDINGS

The taxpayer is sustained.

V. Sales/Use Tax—Proof of Sales Tax Paid**DISCUSSION**

Taxpayer has produced invoices that show sales tax was previously paid on two transactions for which the audit generated an assessment against taxpayer. These invoices are sufficient evidence that taxpayer has already paid the sales tax due.

FINDINGS

The taxpayer is sustained.

VI. Sales/Use Tax—Use Tax Accrued**DISCUSSION**

Taxpayer has produced invoices that show use tax was previously accrued on one transaction for which the audit generated an assessment against taxpayer. These invoices are sufficient evidence that taxpayer has already accrued the use tax due.

FINDINGS

The taxpayer is sustained.

VII. Sales/Use Tax—Bulk Mailing

Taxpayer purchased a bulk mailing project in a transaction that was assessed sales tax in its entirety. Taxpayer has submitted the invoice for the purchase, which contains hand-written breakouts of the postage, freight charges, and other services. Taxpayer claims that, in accordance with a Revenue Ruling, when an invoice breaks out non-taxable services from taxable retail sales, the individual components of the transaction should be considered separately. In other words, the retail sale should be taxed and the services should not. It should be noted that Revenue Rulings are only binding with respect to the taxpayer to which they are issued.

Taxpayer takes a very open view of the Revenue Ruling. This ruling was specifically designed to deal with service charges related to the banquet and catering industry. Even if the Department were to adopt such a liberal view and apply it to a bulk mailing project, taxpayer has not met its burden of production in this case.

The invoices provided to the Department are hand-written and were added to original source documents after the audit was completed. Absent further evidence that the transaction is as taxpayer submits that it is, the Department cannot find in taxpayer's favor.

FINDINGS

The taxpayer is respectfully denied.

DEPARTMENT OF STATE REVENUE

0120020125.LOF

LETTER OF FINDINGS NUMBER: 02-0125**Adjusted Gross Income Tax****For the Tax Period 1995-2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**1. Adjusted Gross Tax-Imposition**

Authority: IC 6-8.1-5-1(b), IC 6-3-2-1, IC 6-8.1-5-4(a).

The taxpayer protests the assessment of adjusted gross income tax.

STATEMENT OF FACTS

The taxpayer is an individual who works as a contractor in the business of roofing homes and local businesses. He also does some home remodeling projects. The taxpayer did not file Indiana adjusted gross income tax returns for the years 1995-2000. Pursuant to an audit, the department assessed adjusted gross income tax, interest, and penalty for the tax period 1995-2000. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Adjusted Gross Income Tax-Imposition

DISCUSSION

Indiana imposes the adjusted gross income tax on Indiana residents. IC 6-3-2-1. All department assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

Taxpayers are required to maintain adequate original documentation and records for the department to determine the correct amount of tax due. IC 6-8.1-5-4(a). The taxpayer did not produce any documentation or records for the use of the department's auditor in preparation of the audit. Due to the lack of records, the auditor had to use the best information available to make a reasonable estimate of the adjusted gross income tax due to the state.

Although the taxpayer was given adequate opportunity, he did not present any documentation or records to demonstrate that the audit assessment was incorrect. The taxpayer did not sustain his burden of proof.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20020241.LOF

LETTER OF FINDINGS NUMBER: 02-0241
Gross Retail & Use Tax-Production Exemption
For Years 1998, 1999, 2000

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Gross Retail and Use Taxes—Production exemption**

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-3-7; IC § 6-2.5-4-2(c); IC §§ 6-2.5-5-3, -5-1; IC § 6-2.5-5-1.1; IC § 6-2.5-5-9; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4; 45 IAC 2.2-5-8; *Harlan Sprague Dawley, Inc. v. Indiana Department of State Revenue*, 605 N.E.2d 1110 (Ind. Tax 1992)

Taxpayer protests the assessment of use tax on various materials, equipment, and utilities used in finishing customers' tangible personal property where no gross retail tax was paid at the point of purchase. Taxpayer claims the materials are exempt from tax because they are part of the production process.

STATEMENT OF FACTS

Taxpayer's business started out as furniture manufacturing; now, however, taxpayer "finishes" products manufactured by customers who send tangible personal property to taxpayer for the addition of paint, finishes, coatings, etc. Taxpayer then returns the items to its customers following packaging and labeling instructions required by each customer. Taxpayer also manufactures some tangible personal property based on specifications supplied by customers. The audit determined exempt percentages for items taxpayer produced, but did not exempt from tax items used solely in finishing customers' tangible personal property. Additional facts will be added as necessary.

I. Gross Retail and Use Tax—Production exemption**DISCUSSION**

Taxpayer protests the assessment of use tax on various items taxpayer uses to apply paint, varnishes, coatings, etc. to tangible personal property manufactured by customers who send it to taxpayer for finishing. Taxpayer then returns the tangible personal property to the customers who have provided specific packaging and labeling instructions taxpayer must follow in returning the finished products to its customers. The audit determined that taxpayer was entitled to exempt finishing materials used on tangible personal property manufactured according to customer supplied specifications, approximately 25% to 30% of taxpayer's business.

The audit also determined that the required packaging and labeling for taxpayer's outside customers was non-exempt, finding that the labels were used for in-house inventory tracking. The audit also determined the packaging was non-exempt. The audit characterized 70% to 75% of taxpayer's business as being an industrial processor who returns customers' tangible personal property to them after processing.

Taxpayer argues that it is entitled to the full production exemption, claiming that the finishing of customers' tangible personal property by using the air hoist to position tangible personal property on the conveyor belt to transport it to the various rooms where paint, etc., is applied, constitutes direct use in the direct production of a customer's product. The audit had determined the air hoist was used to transport work-in-progress 50% of the time. Therefore, 50% of it was exempt and 50% of it was taxable. Taxpayer also argues that the packaging and shipping materials, including labels, are required components of the products shipped to their customers and are therefore an essential and required part of the production process. Taxpayer also argues that all of its utility usage is exempt, not just the percentages the audit had determined based on data taxpayer provided and on an agreed-upon methodology for determining usage.

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 is the property was acquired in a retail transaction.” An exemption is provided in IC § 6-2.5-3-4 if “the property was acquired in a retail transaction and the state gross retail tax” was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a “person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;” therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

The specific statute at issue, IC § 6-2.5-5-1, provides in pertinent part:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person’s business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture.

The specific regulation at issue, 45 IAC 2.2-5-8, provides in pertinent part:

(a) In general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. The exemption provided in this regulation extends only to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. It does not apply to material consumed in production or to materials incorporated into tangible personal property produced.

(b) The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property.

(c) The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(d) Pre-production and post-production activities. “Direct use in the production process” begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

The general rule, outlined in great detail in the regulation, is that purchases are either subject to the state’s gross retail tax or the state’s use tax unless the specific exemption applies. The parameters of the so-called “production exemption” are narrow: to be exempt, the tangible personal property must be directly used in the direct production of other tangible personal property. The regulation defines direct use and direct production as requiring “an immediate effect on the article being produced;” i.e., the production-exempt tangible personal property must be an essential and integral part of an integrated process.”

With respect to the air hoist system, taxpayer argued that using it to place truck wheels on the overhead paint conveyor was the first step in production. In reality, the air hoist system is used in pre-production; the system makes no changes to the wheels before they are placed on the paint conveyor. Plus, the air hoist system is equipment, not a consumable supply. Therefore, that part of the audit denying the production exemption for the air hoist system when it is being used for pre-production is correct.

Audit relied on the definition of an industrial processor set forth in IC § 6-2.5-4-2(c) to conclude that taxpayer was not in the business of manufacturing. With respect to this part of the statute, the tax court has stated “[n]othing in the context of this statute demonstrates its exemption provisions are to have a different meaning than those in the industrial exemptions, and the court therefore gives the utility exemption provisions the same meaning as their counterparts in the industrial exemptions.” *Harlan Sprague Dawley v. Indiana Department of State Revenue*, 605 N.E.2d 1222, 1230 (Ind. Tax 1992), citation omitted. “Processing” is one of the activities that generally entitles a taxpayer to other exemptions. IC §§ 6-2.5-5-3, -5-1. In this case, the utilities used in the operations related to taxpayer’s paint and other applications are the type of processing which would entitle taxpayer to the other statutory industrial exemptions. Accordingly, it would be entitled to the exemption for its utilities in light of *Harlan Sprague Dawley*.

With respect to taxpayer’s electrical usage, there are no exemptions for maintaining a controlled environment outside the production process. Taxpayer’s major argument here concerned the auditor’s methodology in assessing tax on electrical consumption. When given the opportunity to supply a different one, taxpayer did not provide one. Taxpayer supplied all data in connection with electrical usage. The paint shakers at issue were listed by taxpayer as being in the maintenance department. Therefore, that part of the audit denying the production exemption for electrical usage for heat and air conditioning outside the production process and for the paint shakers is correct.

However, with respect to all electric meters examined in the audit, the auditor prorated dollar totals and ended up with percentages of exempt and non-exempt usages. Based on *Harlan Sprague*, taxpayer should be allowed all applicable exemptions on all meters, both gas and electric. Audit should revisit this issue.

With respect to the air make-up system, taxpayer argued that the gas usage, recorded by three gas meters, should be 100% exempt because the system is used to comply with environmental quality standards. However, the gas used is not for preventing the

expulsion of contaminants into outside air or water. Taxpayer cites Occupational Safety and Health Act requirements which benefit employees, not the environment. The Department's consistent policy has been to use the Environmental Protection Act's strictures and exempt equipment, etc., that help control outside environmental quality. Therefore, that part of the audit denying the production exemption for the air make-up system is correct.

Taxpayer claimed that the labels affixed to the packaging used to return customers' tangible personal property to them were not used for inventory tracking purposes, but because customers had definite requirements for the packaging and labeling of the packaging once their tangible personal property was ready to be returned to them. Customers' packaging and labeling requirements are not exempt from taxation merely because taxpayer must follow them in order to return customers' property to them. Taxpayer may be liable for damage, but taxpayer has no ownership interest in the property, nor is the property packaged for resale. Therefore, packaging and labeling materials are not exempt from the state's gross retail and use taxes. *See*, IC § 6-2.5-5-9.

FINDING

Taxpayer's protest concerning the assessment of use tax on items taxpayer alleged fell within the production exemption to the state's gross retail and use taxes is denied. That part of taxpayer's protest regarding gas and electric exemptions is sustained subject to review by audit.

DEPARTMENT OF STATE REVENUE

0420020398.LOF

LETTER OF FINDINGS NUMBER: 02-0398

Sales and Use Tax

For the Tax Period 1999-2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Sales and Use Tax - Imposition of Use Tax on Tangible Personal Property

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-3-2 (a), IC 6-2.5-2(c)(1).

The taxpayer protests the assessment of use tax on certain items of tangible personal property.

2. Sales and Use Tax - Imposition of Use Tax on Delivery Charge

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-4-1(b), IC 6-2.5-4-1(e)(2), 45 IAC 2.2-4-3(b)(3), 45 IAC 2.2-4-3(a).

The taxpayer protests the imposition of tax on a delivery charge.

3. Sales and Use Tax - Imposition of Use Tax on Painting and Wallpapering Supplies

Authority: IC 6-2.5-3-2(a).

The taxpayer protests the imposition of use tax on painting and wallpapering supplies.

4. Sales and Use Tax - Imposition of Use Tax on Truck

Authority: IC 6-2.5-3-2 (b), IC 6-2.5-2(c)(1), IC 6-8.1-3-1.

The taxpayer protests the imposition of use tax on a truck.

STATEMENT OF FACTS

The taxpayer is a sole proprietor who does business as a lump-sum contractor. The taxpayer's business installs wallpaper and other wall coverings in hotels and/or motels around the United States. After an audit for the tax period 1999-2000, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest, and penalty. The taxpayer agreed with some of the assessed items and protested the remainder of the assessment. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax - Imposition of Use Tax on Tangible Personal Property

DISCUSSION

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes an excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC 6-2.5-3-2 (a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC 6-2.5-2(c)(1).

The taxpayer protests the imposition of use tax on its use of seeds. The taxpayer submitted an invoice indicating that sales tax had been paid on the purchase of the seeds. Therefore, the use of the seeds is exempt from the use tax.

The taxpayer also protests the imposition of Indiana use tax on a fan. The taxpayer's crew working in Texas purchased the fan in Texas, used the fan in Texas, and paid the Texas sales tax in Texas. Since the fan was not used by the taxpayer in Indiana, it is not subject to the Indiana use tax.

The taxpayer also protests the imposition of Indiana use tax on fifty five (55) Moen rough in kits with a tub, shower, and valve. These kits were purchased by taxpayer's crew working in Chicago, Illinois from a distributor located in Grove Village, Illinois (a suburb of Chicago). They were installed in a motel in Arlington Heights, Illinois (a suburb of Chicago). Illinois sales tax was paid on the kits at the time of purchase. Since the kits were not used in Indiana, they are not subject to the Indiana use tax.

The taxpayer also protests the imposition of Indiana use tax on fabric books listed as reference 0190456. The taxpayer agrees the use of the fabric books was subject to use tax, however, the item is listed twice in the audit. Each transaction can only be subjected to the sales or use tax once. The duplication of the item in the audit was an inadvertent error.

FINDING

The taxpayer's protest to the imposition of use tax on seeds, a fan, rough in kits, and the duplicate fabric book is sustained.

2. Sales and Use Tax - Imposition of Use Tax on Delivery Charge

DISCUSSION

The taxpayer purchased hardwood mulch and paid for delivery of the mulch to its facility. The audit imposed use tax on the delivery charge. The taxpayer protested this assessment.

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequent selling of tangible personal property. IC 6-2.5-4-1(b). Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax. Delivery prior to the transfer of title to the purchaser is, however, one of the enumerated services that is specifically subjected to sales tax. IC 6-2.5-4-1(e)(2). If sales tax is not collected at the time of the original payment, the delivery charge is subject to the complimentary use tax. IC 6-2.5-3-2 (a).

The taxpayer maintains that separately stated delivery charges where no F.O.B. has been established are non taxable. The taxpayer bases this conclusion upon 45 IAC 2.2-4-3(b)(3) which states, "[d]elivery charge[s] separately stated where no F.O. B. has been established [are] non taxable." The taxpayer's reliance on F.O.B. designations in this case is misplaced. The Regulation's reference to F.O.B. designations are applicable only when public transportation companies deliver the product.

There are two prerequisites for separately stated delivery charges to be subject to sales or use tax. The Regulations state these prerequisites as "[s]eparately stated delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of property not owned by the buyer." 45 IAC 2.2-4-3(a). In this instance, the first prerequisite for assessing sales tax is met because the retail merchant delivered the mulch.

Whether or not sales or use tax applies to these delivery charges, then, depends upon when title to the goods transferred to the buyer. The Indiana law concerning the passing of title of goods to the buyer states that, "Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods..." IC 26-1-2-401(2). The taxpayer offered no evidence indicating that title to the goods passed from the retail merchant to the taxpayer at any point prior to delivery of the goods. The taxpayer's fact situation, then, meets the requirements of 45 IAC 2.2-4-3(a) with the delivery service taking place prior to the transfer of title to the buyer. The delivery charges are subject to Indiana sales and use tax.

FINDING

The taxpayer's protest is denied.

3. Sales and Use Tax - Imposition of Use Tax on Painting and Wallpapering Supplies

DISCUSSION

The taxpayer's protest items 3, 6, and 9 concern the assessment of use tax on painting and wallcovering supplies pursuant to IC 6-2.5-3-2(a). The supplies were purchased from two major national paint suppliers. Even though the invoices all have the taxpayer's Indiana address as the "ship-to" address, the taxpayer contends that the items were never shipped to Indiana. The taxpayer argues that each of these items was purchased and used in another state where the taxpayer had crews working on hotels and motels.

The taxpayer supplied a letter from one of the vendors stating that in the absence of a job account, the "ship-to" address will be the shop account of sold-to information. The letter also indicated that the invoice indicates the store location where the items were sold. Each of the protested invoices originates in a store outside of Indiana. Each invoice indicates that sales tax was paid to the state where the store was located. The taxpayer indicated that supplies were consistently purchased in stores near the out-of-state work locations where they were used. Since the subject supplies were not used in Indiana, the Indiana use tax does not apply.

FINDING

The taxpayer's protest is sustained.

4. Sales and Use Tax - Imposition of Use Tax on Truck

DISCUSSION

The taxpayer loaned money to another party to purchase a triaxle dumptruck. After the purchaser defaulted on its repayment of the loan, the taxpayer foreclosed on the lien. The taxpayer took possession of the truck and titled the truck in its name. The Bureau of Motor Vehicles did not collect sales tax from the taxpayer when it retitled the truck. After the repossession, the taxpayers used the truck for business purposes. They added the truck to their depreciation schedule. The taxpayer protests the assessment of use tax on their use of the truck pursuant to IC 6-2.5-3-2(b) as follows:

The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

Nonrule Policy Documents

- (1) is acquired in a transaction that is an isolated or occasional sale; and
(2) is required to be titled, licensed, or registered by this state for use in Indiana.

The taxpayer acquired the truck in an isolated sale. The taxpayer needed to title the truck to drive it on the Indiana highways in the course of its business. The taxpayer did not pay sales tax when it titled the truck. Therefore, there is no exemption from the use tax because sales tax was paid on the sale transaction. IC 6-2.5-2(c)(1). The taxpayer did not establish that its use of the truck qualified for any other exemption. The taxpayer meets the requirements of the statute, thus subjecting the use of the truck to the Indiana use tax.

The taxpayer argues that it does not owe use tax at this time because the Bureau of Motor Vehicles failed to collect sales tax at the time the truck was titled to the taxpayer. The taxpayer errs in this conclusion. The department is charged with the primary responsibility for collecting use taxes. IC 6-8.1-3-1. If the Bureau of Motor Vehicles mistakenly fails to collect the use tax at the time of issuing a title, the department has the obligation to collect the use tax at a later time. The assessment of use tax pursuant to the audit is an appropriate method for the department to collect the use tax due to the state.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420030031.LOF

LETTER OF FINDINGS NUMBER: 03-0031

Sales Tax

For the Calendar Years 1998, 1999, 2000, & 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a Department sales and use tax audit conducted for the years the calendar years 1998, 1999, 2000, & 2001.

The taxpayer is a company located in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the negligence penalty should be abated as the error was unintentional, and, the taxpayer initiated the audit.

The Department points out that there is no provision in the Indiana tax regulations that waives penalty when a taxpayer initiates the audit. Also, the error in the audit was 24% which the Department considers material.

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

0420030089.LOF

LETTER OF FINDINGS NUMBER: 03-0089

Sales Tax**For the Calendar Years 1999, 2000, & 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a Department prepaid sales tax audit conducted for the years the calendar years 1999, 2000, & 2001.

The taxpayer is a company located in Indiana.

I. Tax Administration – Penalty**DISCUSSION**

The taxpayer argues the negligence penalty should be abated as the error was unintentional, and, the taxpayer had no control over the remittance of prepaid sales tax as the fuel in question was sold to retail locations other than the taxpayer's locations.

The Department disagrees. As the taxpayer is the distributor of the fuel to other retail locations other than the taxpayer's own locations, the taxpayer has control of the collection and the remittance of the prepaid sales tax on the sale of the bulk fuel.

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 the tax due date. 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

04-20030142.LOF

04-20030143.LOF

01-20040046.LOF

LETTER OF FINDINGS NUMBER: 03-0142; 03-0143; 04-0046**Gross Retail & Use Tax****Income Tax****For Years 1999, 2000, 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 Retail Tax—Automobile Sales**

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1

Taxpayers protest the assessment of the state's gross retail tax on automobiles they allege their dealership did not sell.

II. Gross Income Tax—Automobile Sales

Authority: IC § 6-2.1-1-2; IC § 6-2.1-2-2; 45 IAC 1.1-2-1

Taxpayers protest the assessment of the state's gross income tax on automobiles they allege their dealership did not sell.

III. Penalty—Request for Waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayers protest the imposition of the 10% negligence penalty and request a waiver.

STATEMENT OF FACTS

Taxpayers, husband and wife, own a registered Indiana motor vehicle dealership. When taxpayers sold a car, the selling price upon which sales tax was charged was the sale price after deducting a trade-in. In the normal course of doing business, taxpayers

completed the required ST-108's showing that the tax had been collected. The audit compared taxpayers' sales records to sales reported to the Department and determined that taxpayers had underreported sales each year during the audit period. The income audit, based on the same set of facts and records, also determined that taxpayers had underreported their gross income for the audit period. At the hearing, taxpayers withdrew the hobby racing/use tax issue, docket number 04-20030142. Additional facts will be supplied as required.

I. Gross Retail Tax—Automobile Sales

DISCUSSION

Taxpayers protest the assessment of the state's gross retail tax on automobile sales taxpayers allege did not occur. Taxpayers kept envelopes/files folders for all vehicles sold, stating that if there were no envelopes/file folders for a particular month and year, then no automobiles were sold. Since there were no envelopes/file folders for 1999 and 2000, taxpayers allege they did not sell any automobiles in those years. However, because taxpayers failed to maintain complete records, the auditor examined the Dealer's Short Report for taxpayers' dealership, obtained from the Bureau of Motor Vehicles. The Dealer Short Report represents information gathered from ST 108's that all dealerships must send to the Bureau to show that tax has been paid on car sales. It was the information on the Dealer's Short Report that the auditor used to determine taxpayers' additional tax liabilities. The auditor did not examine any ST 108's. Taxpayers, at the time of the audit, had no evidence that the picked up sales were fraudulent. Taxpayers stated some of the vehicles were not sold by their dealership. At the hearing, taxpayers provided four microfiche copies of ST-108's for four vehicles taxpayers claim they did not sell. Taxpayers pointed out that on the ST-108's, addresses are incorrect or not there at all, there are incomplete dealership numbers, incorrect zip codes, and there are no FID numbers. The taxpayers also claim the signatures are forged.

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.

At this time, taxpayers state that they cannot obtain all the ST-108's the audit relied on to assess the additional sales tax because the cost of obtaining copies of the microfiche from the Bureau of Motor Vehicles is prohibitive. The ST-108's are not in the file. Taxpayers have the burden of showing that an audit assessment is incorrect. Without more evidence that the audit assessment is incorrect, taxpayers have not sustained their burden of proof.

FINDING

Taxpayers' protest concerning the assessment of the state's gross retail tax on vehicles taxpayers claim they did not sell is denied.

II. Gross Income Tax—Automobile Sales

DISCUSSION

The same facts from the gross retail tax issue apply to the gross income tax issue. The same arguments and evidentiary issues also apply. The applicable statutes and regulations regarding the state's gross income tax, IC § 6-2.1-1-2, IC § 6-2.1-2-2, and 45 IAC 1.1-2-1, impose the gross income tax on "all the gross receipts a taxpayer receives" from business activities within the state of Indiana. *See*, IC § 6-2.1-2-2(a)(1). Taxpayers would owe gross income tax on receipts from automobile sales, provided that such gross income can be plausibly identified. This is the same issue and analysis as appeared under the discussion of the state's gross retail tax, *supra*. Without more evidence to show that the audit assessment is incorrect, taxpayers have not sustained their burden of proof.

FINDING

Taxpayers' protest concerning the assessment of the state's gross income tax on vehicles taxpayers claim they did not sell is denied.

III. Penalty—Request for waiver

DISCUSSION

Taxpayers protest the imposition of the 10% negligence penalty on the entire assessment. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayers essentially cite the fraudulent ST-108's as the basis for not paying the taxes owed.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayers have not set forth a basis whereby the Department could conclude taxpayers exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer in maintaining proper records. Therefore, given the totality of all the circumstances, waiver of the penalty on the entire assessment is inappropriate in this particular instance.

FINDING

Taxpayers' protest concerning the proposed assessment of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

02-20030154.LOF

LETTER OF FINDINGS: 03-0154

Indiana Corporate Income Tax

For the Year 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income from Services Provided to Indiana Customers – Adjusted Gross Income Tax.

Authority: IC 6-8.1-5-1; 45 IAC 3.1-1-55

Taxpayer protests the imposition of adjusted gross income tax with respect to its subscriptions received from Indiana customers.

STATEMENT OF FACTS

Taxpayer is an out-of-state business which provides financial market data to customers. Taxpayer collects its data in California, and in turn the data is provided via cable boxes and other means to customers throughout the country, including Indiana.

The Department's audit of taxpayer's years from 1994 to 1995 and from 1998 to 2000 determined that the income received from Indiana subscriptions constituted "Indiana sales [to be] included in the sales factor." As a result, the audit concluded that Taxpayer owed additional Indiana adjusted gross income tax for 1995. Taxpayer disagreed with that conclusion and submitted a protest.

Taxpayer was notified of the hearing via letter; however, at the designated time of the hearing, no representative of Taxpayer appeared or called the hearing officer. This Letter of Findings results, based on the information included in the file.

DISCUSSION

I. Income from Services Provided to Indiana Customers – Adjusted Gross Income Tax.

Taxpayer argues that income received from Indiana customers is not subject to the state's adjusted gross income tax. Taxpayer bases this argument on the ground that activities related to the performance of services provided to Indiana customers is conducted in California. Specifically, taxpayer cites to 45 IAC 3.1-1-55 which states:

Gross receipts from transactions other than sales of tangible personal property shall be included in the numerator of the sales factor if the income producing activity which gave rise to the receipts is performed wholly within this state. Except as provided below if the income producing activity is performed within and without this state such receipts are attributable to this state if the greater proportion of the income producing activity is performed here, based on costs of performance.

Taxpayer concludes that the cost of performance of the market data should be apportioned to California under the "cost of performance rules."

Under the rule cited by taxpayer, the issue is the location of the taxpayer's "income producing activity." 45 IAC 3.1-1-55 states that the term, "income producing activity" means "the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits." The rule states that a taxpayer's "[i]ncome producing activity is deemed performed at the situs of real, tangible and intangible personal property or the place where personal services are rendered." Id.

Taxpayer's income is derived from two sources: cable boxes located in Indiana, which are not at issue, and subscriptions to its market data. Taxpayer argues that its data collection, customer service, and engineering functions are performed entirely in California, and thus the income from the subscription fees should be sourced there as opposed to Indiana. However, the income producing activity-subscription fees- only occurs when the data is received in this and other states. Further, even assuming that the cost of performance standard advanced by Taxpayer is appropriate, Taxpayer has not provided sufficient information with respect to such costs and accordingly has not met its burden of proof, as required under Ind. Code § 6-8.1-5-1.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040054.LOF

LETTER OF FINDINGS NUMBER: 04-0054

**Sales and Withholding Tax
Responsible Officer
For the Tax Period 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

1. Sales and Withholding Tax - Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), IC 6-3-4-8(f), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The taxpayer was an employee of a corporation that did not properly remit sales taxes and withholding taxes to the state during the tax period 2000-2002. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax and Withholding Tax - Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

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.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995) any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit sales and withholding taxes to the state. The taxpayer submitted substantial documentation indicating that he was not a person with the authority to make financial decisions for the corporation or determine which creditors would be paid. The taxpayer was not responsible for the remittance of trust taxes to Indiana.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

28-20040091.LOF

LETTER OF FINDINGS NUMBER: 04-0091

Controlled Substance Excise Tax

For the Tax Period 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Imposition

Authority: IC 6-8.1-5-1 (b), IC 6-7-3-5, IC 6-7-3-1.

The taxpayer protests the imposition of controlled substance excise tax.

STATEMENT OF FACTS

The taxpayer's residence was searched on December 14, 2001. The officers found a variety of controlled substances, drug paraphernalia, and indoor grow equipment. The taxpayer pled guilty to Operating a Vehicle with Controlled Substance in Blood. On January 6, 2004, the County Prosecutor requested in writing that controlled substance excise tax be imposed against the taxpayer.

The Indiana Department of Revenue, hereinafter referred to as the “department,” issued a Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on January 15, 2004 in a base tax amount of \$21,317.20. The taxpayer filed a protest to the assessment and a telephone hearing was held. This Letter of Findings results.

I. Controlled Substance Excise Tax - Imposition

DISCUSSION

All notices of assessment issued by the department are presumed to be correct. The taxpayer bears the burden of proving that the assessment of tax is incorrect. IC 6-8.1-5-1(b).

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of controlled substances in the State of Indiana. Methamphetamine, amphetamine, and marijuana are defined as controlled substances subject to the excise tax. IC 6-7-3-1. The amphetamine, methamphetamine, and marijuana assessed were actually tested and weighed by an employee of the department. Since the remainder of the controlled substances seized from the taxpayer’s house were destroyed pursuant to court order, no additional controlled substance excise tax was assessed.

The taxpayer contends that the controlled substances were illegally seized because the police officer was later fired for cause. The taxpayer did provide overwhelming evidence that the police officer was fired for cause. The evidence provided, however, does not suggest that the police officer acted in an inappropriate or illegal fashion in this particular arrest and seizure of evidence.

FINDING

The taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE

0220000456.SLOF

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 00-0456

Income Tax

For Tax Years 1995-97

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUE

I. Income Tax—Partnership Distributions

Authority: IC 6-2.1-2-2(a)(2); IC 6-3-2-2(a)(2); IC 6-3-8-1; IC 6-3-8-2; 45 IAC 1-1-159.1; 45 IAC 3.1-1-153

Taxpayer protests the imposition of Gross, Adjusted Gross, and Supplemental Net Income taxes on partnership distributions.

STATEMENT OF FACTS

Taxpayer is a non-resident minority partner in a limited partnership. The partnership owns several pieces of real property in Indiana shopping malls. The Indiana Department of Revenue (“Department”) issued proposed income tax assessments on partnership distributions and taxpayer protested the assessments. The Department issued a Letter of Findings (“LOF”) denying the protest and taxpayer requested a rehearing. Due to new factual information, the Department granted a rehearing. Further facts will be provided as necessary.

I. Income Tax—Partnership Distributions

DISCUSSION

Taxpayer protested the Department’s proposed assessments and a Letter of Findings was issued denying that protest. Taxpayer requested a rehearing for the protest. The Department granted the request for rehearing in order to clear up some confusion regarding the facts in the protest. In its original protest letter, taxpayer stated that it held passive investment interests in four Real Estate Investment Trusts (REITs), and it believed that those interests should be treated as intangibles. Taxpayer believed that such intangibles were not subject to income tax since taxpayer was a non-resident with no contact with Indiana other than ownership of the REIT interests. The LOF denied the protest on the grounds that ownership of real property, via the REITs, constituted sufficient contact to subject taxpayer to Indiana income tax.

As part of its request for rehearing, taxpayer established that it was not a member of any REIT, but rather was a minority partner in four limited partnerships which each had a REIT as the general partner. In the initial protest, taxpayer stated that its partnership interests in REITs should be treated as intangibles. Because the statutes do not specifically explain whether or not REIT interests are intangibles, the bulk of the LOF was dedicated to determining if REIT interests were intangibles or not, and whether or not taxpayer had a business situs in Indiana. Since it has now been established that taxpayer had ordinary partnership interests instead of REIT interests, this analysis is unnecessary. The partnerships were renting real property in Indiana. This gave rise to income from activity within Indiana, which is taxable gross income under IC 6-2.1-2-2(a)(2). 45 IAC 1-1-159.1 specifically explains that a corporate partner’s distributive share of income from the partnership is taxable as gross income. IC 6-3-2-2(a)(2) and 45 IAC 3.1-1-153(b) and (c) explain that such income is taxable as adjusted gross income. IC 6-3-8-1 and IC 6-3-8-2(b) explain that the

supplemental net income tax is imposed on the net income of all corporations except those subject to the financial institutions tax. Since taxpayer is a corporation, but is not subject to the financial institutions tax, it is subject to the supplemental net income tax.

In the rehearing, taxpayer referred to an Alabama Department of Revenue Final Order in support of its protest. As was explained to taxpayer during the rehearing, the Department is not controlled by other states' laws or departmental decisions. Taxpayer also referred to an Indiana Supreme Court case which dealt with partnership issues unrelated to taxation. Again, the initial LOF was focused on determining if taxpayer had a business situs in Indiana, and as part of the analysis referred to a partnership statute. As previously explained, since it is now established that taxpayer is receiving ordinary partnership income from Indiana business activities, such a reference to a partnership statute is unnecessary. The Indiana tax statutes and regulations are clear on the subject of partnership distributions. In this case, since it has now been established that taxpayer received ordinary partnership income from business activities in Indiana, the assessments for gross income tax, adjusted gross income tax and supplemental income tax are correct.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010041.SLOF

SUPPLEMENTAL LETTER OF FINDINGS: 01-0041

Indiana Corporate Income Tax

For the Tax Years 1993 through 1996

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.

ISSUES

I. Calculation and Reporting Errors.

Authority: IC 6-8.1-5-1(b); 45 IAC 3.1-1-45.

Taxpayer argues that the original audit report contained certain computational and reporting errors which were not resolved within the original Letter of Findings.

II. Gross Income Tax Calculation.

Authority: IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); IC 6-2.1-2-2(b); IC 6-2.1-2-3; IC 6-2.1-2-4; IC 6-2.1-2-5; IC 6-2.1-2-5(9); IC 6-8.1-5-1(b).

Taxpayer takes exception to the audit's determination as to the amount of its gross income subject to the high rate.

III. Apportionment Sales Factor – Adjusted Gross Income Tax.

Authority: 45 IAC 3.1-1-50(5); 45 IAC 3.1-1-55(e); Sherwin-Williams Co. v. Indiana Dept. of State Revenue, 673 N.E.2d 849 (Ind. Tax Ct. 1996); AT&T v Director, Division of Taxation, 476 A.2d 800 (N.J. Super. A.D. 1984).

Taxpayer restates that – for purposes of calculating the sales denominator – the audit erred in excluding income received from the sale of short term securities.

IV. Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer maintains that it is entitled to an abatement of the ten-percent negligence penalty assessed at the time of the original audit review.

STATEMENT OF FACTS

Taxpayer is in the business of manufacturing, distributing, and selling various paints and paint coatings. Taxpayer sells these products to professional, industrial, commercial, and retail customers. During the relevant period, taxpayer operated a manufacturing plant within the state. In 2001, the Department of Revenue (Department) completed an audit review of taxpayer's business records and tax returns. This audit review concluded that taxpayer owed additional Indiana corporate income taxes. Taxpayer disagreed with the audit's methodology, conclusions, and consequent assessments and submitted a protest to that effect. In 2003, an administrative hearing was conducted during which taxpayer explained the basis for its protest. As a result, the Department issued a Letter of Findings denying in part and sustaining in part the taxpayer's protest. Nonetheless, taxpayer disagreed with those portions of the Letter of Findings denying taxpayer's initial protest. Therefore, taxpayer requested the opportunity to provide additional information at an administrative rehearing. That request was granted; an additional hearing was conducted, and this Supplemental Letter of Findings results.

DISCUSSION

I. Calculation and Reporting Errors.

Taxpayer reasserts three arguments pertaining to factual and reporting "errors" purportedly contained within the original audit

report and which remained unresolved following publication of the original Letter of Findings. Specifically, taxpayer maintains that the audit report erred in the following manner:

A. Real Property Rent Expense. Taxpayer believes that – for purposes of determining the numerator of the property factor pursuant to 45 IAC 3.1-1-43 – the audit report overstated the amount of rent it paid for its Indiana paint manufacturing facility. The Letter of Findings found that taxpayer did not refute the audit report’s conclusion as to the amount of rent. Taxpayer has now provided a copy of the lease agreement along with an amendment to that agreement representing the amount of monthly rent paid.

B. Personal Property Rent Expense. Taxpayer states that the audit erroneously listed the amount of personal property rent expense for 1993 by erroneously duplicating the amount listed for 1994. According to taxpayer, the audit overstated the amount of 1993 personal property rent expense by approximately \$1,000.

C. Average Inventory and Personal Property. The audit calculated the average amount of inventory and personal property located at taxpayer’s Indiana manufacturing facility. Taxpayer states that audit’s arithmetic was flawed; in effect, taxpayer states that the audit made a computational mistake because the audit “forgot to divide by two.”

In regards to the “Real property rent expense,” taxpayer has provided a complete copy of the lease agreement for the Indiana paint manufacturing facility. The document indicates that taxpayer is required to make \$5,600 in monthly rent payments. As taxpayer asserts, this amount alone is substantially less than the monthly rent expense reported in the original audit report. However, taxpayer is incorrect in suggesting that the \$5,600 monthly rental amount is the beginning and end of the calculation. 45 IAC 3.1-1-45 states in relevant part as follows:

“Annual rent” is the actual consideration for use of the property and includes payment of a fixed sum of money or percentage of sales profits or receipts, as well as interest, taxes, insurance, repairs and any other items required as payment under the lease which are meant as additional rent or in lieu of rent.

The parties’ lease agreement includes the requirement that taxpayer reimburse to the property owner, “[A]ll general real estate taxes and assessments for betterments or improvements which may be levied by any lawful authority against the premises.” In addition, the agreement stipulates that taxpayer is to maintain liability and property insurance for the leased facility.

For purposes of computing the property factor, the rented property “is valued at eight times its annual net rental rate.” 45 IAC 3.1-1-45. However, the \$5,600 rate cited by taxpayer is only one portion of the formula. The value of rented property includes not only the base rate, but it includes the amount of taxes and any repairs or improvements made to the rented property. *Id.* To determine the value of the manufacturing facility, 45 IAC 3.1-1-45 requires that the base rent be multiplied by eight (\$44,800). To that amount is added the costs of insurance, improvements, repairs, and any other expenses which taxpayer incurs under the terms of the agreement; all of these individual items are multiplied by eight.

Taxpayer’s original protest as to the amount of “Real Property Rent Expense” was denied because taxpayer failed to provide a complete copy of the lease agreement between itself and the manufacturing facility’s lessor. Taxpayer has corrected that oversight and supplied the agreement which clearly states that the monthly rate for the property is \$5,600 per month. However, the Department is unable to conclude that that audit incorrectly calculated the amount of rent for the Indiana manufacturing facility. The amount stated in the original audit report is not unreasonable, and taxpayer has not provided sufficient evidence, as to the additional associated costs of the property, to specifically refute that amount. The factual and legal conclusions contained within the original audit report are presumed correct. IC 6-8.1-5-1(b). “The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” *Id.* As to the property value of the rented Indiana manufacturing facility, taxpayer has failed to meet its burden of demonstrating that the original assessment was incorrect.

The audit division has reviewed taxpayer’s remaining points of contention – the “Personal Property Rent Expense” and the “Average Inventory and Personal Property” – and has concluded that taxpayer’s alternative computations are correct.

FINDING

Taxpayer’s protest as to the “Real Property Rent Expense” is respectfully denied. Taxpayer’s protest as to the “Personal Property Rent Expense” and the “Average Inventory and Personal Property” is sustained.

II. Gross Income Tax Calculation.

According to taxpayer, it “takes exception with the inclusion of certain receipts in the determination of the gross income tax based on high and low rate receipts.” Taxpayer maintains that apportionment of its gross income as to high and low rate receipts was made “arbitrarily” and that taxpayer now “requests support for the numbers included in the high rate calculation.”

Taxpayer has reframed the gross income tax issue from that posed in the initial protest and addressed within the original Letter of Findings. Originally, taxpayer maintained that the money received by its retail distributors for the delivery and installation of floor coverings was not subject to gross income tax at the high rate because taxpayer was acting in an agency capacity when it accepted this money. Taxpayer’s original argument was that it was acting as an agent for the independent service providers who actually delivered and installed the floor coverings. The Department found no evidence of an agency relationship between taxpayer and the independent service providers. As stated in the original Letter of Findings, “The audit correctly determined that income obtained from the provision of [installation and delivery] services was subject to the gross income tax at the high rate pursuant to IC 6-2.1-2-3 and IC 6-2.1-2-5(9).” Taxpayer does not now challenge and the Department finds no reason to retreat from that original conclusion. However, taxpayer now maintains that the apportionment of its gross income between the “high” and the “low” rate was arbitrary

and unsubstantiated.

IC 6-2.1-2-2(a)(1) imposes a gross income tax on “the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana....” For a non-resident, the tax is imposed on, “the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana.” IC 6-2.1-2-2(a)(2) “The gross income tax is imposed at two rates, a “high rate” of 1.2 percent and a “low rate” of .3 percent. IC 6-2.1-2-3 “The rate of tax is determined by the type of transaction from which the taxable gross income is received.” IC 6-2.1-2-2(b). The receipts from wholesale sales and from selling at retail are taxed at the low rate. IC 6-2.1-2-4. Receipts from service activities and other business activities are taxed at the high rate. IC 6-2.1-2-5.

According to the audit report, “This audit identified receipts for labor, services, and rent income from sample invoices and requested detail for each year by account.” From this description, it appears that the audit calculated the apportionment of “high” and “low” rate income based on the sample invoices available at the time of the audit review. Taxpayer finds that this sampling method was deficient and that “no information was given to support the numbers.”

The Department finds itself at something of a loss as to how address taxpayer’s most recent protest concerning this gross income tax issue. If the audit had determined that taxpayer received \$500 in service income – taxable at the high rate – but taxpayer provided information purporting to establish that it had actually received only \$300 in service income, the issue would be amenable to either a legal or factual resolution. Taxpayer offers no such argument; it simply expresses a global dissatisfaction with the high/low rate apportionment. As stated in Part I of this Supplemental Letter of Findings, “The factual and legal conclusions contained within the audit report are presumed correct.” See IC 6-8.1-5-1(b). From the narrative included within the audit report, it would seem clear that the audit did not review and tabulate each and every one of taxpayer’s invoices. Instead, it appears that the high/low rate apportionment was based upon a review and extrapolation of a set of “sample invoices.” The Department is unable to agree with taxpayer that this particular accounting methodology was “arbitrary.” Given the substantial size of taxpayer’s business, it finds that the methodology was entirely reasonable. While taxpayer may be disaffected by the results, there is nothing upon which to base a conclusion that the audit based its conclusion as to high/low rate apportionment upon a whimsical or capricious methodology.

FINDING

Taxpayer’s protest is respectfully denied.

III. Apportionment Sales Factor – Adjusted Gross Income Tax.

In reviewing the taxpayer’s adjusted gross income tax returns, the audit excluded from the sales denominator “the principal returned in short term securities.” In other words, the audit determined that “sales” income did not include the amount of principal realized when the taxpayer sold a short term security. Taxpayer continues to disagree and restates its original argument addressed within the original Letter of Findings. According to taxpayer, the audit erred when it excluded the “principal” income from the sales factor. As originally stated by taxpayer, receipts “generated by intangible personal property that produced business income should have been included in the numerator and the denominator of sales factor.” The essence of taxpayer’s argument is that gross receipts equals the amount received on the sale of investment securities including the interest earned and the principal.

In support of its premise, taxpayer points to 45 IAC 3.1-1-55(e) which states that “Gross receipts from intangible personal property shall, if classified as business income, be attributed to this state based upon the ratio which the total property and payroll factors in this state bears to the total of the property and payroll factors everywhere....”

The Indiana Tax Court has addressed the specific issue raised by taxpayer and held, ““Gross Receipts’ for the purpose of the sales factor includes *only* the interest income and not the rolled over capital or return of principal realized from the sale of investment securities.” *Sherwin-Williams Co. v. Indiana Dept. of State Revenue*, 673 N.E.2d 849, 853 (Ind. Tax Ct. 1996) (*Emphasis added*). The Court found that “[P]rincipal included in the proceeds of sale or redemption of short term-investments is not includible in the receipts factor.” *Id.* at 852. In arriving at that conclusion, the Tax Court cited to *AT&T v Director, Division of Taxation*, 476 A.2d 800, 802 (N.J. Super. A.D. 1984) which – in addressing the same issue raised by taxpayer – stated that “To include such receipts in the factor would be comparable to measuring business activity by the amount of money that a taxpayer repeatedly deposited and withdrew from its own bank account” and that to hold “otherwise produces an absurd interpretation of [the relevant statute].” *Id.* Taxpayer cannot logically contend that if it invested \$100 in a security, sold the security, bought a second security with the same \$100 and then repeated that process that six times during the same tax year, that it realized \$600 in sales. Similarly, taxpayer cannot maintain that the \$600 “sales” amount can be used as a means by which fairly and accurately determine the taxpayer’s Indiana income. The \$600 figure is a bookkeeping fiction and represents neither real-world income nor sales.

The audit was correct when it excluded from both the sales numerator and the sales denominator “principal returned in short term securities transaction” because to do otherwise would not lead to an equitable apportionment of taxpayer’s income. Taxpayer may not include the return of principal realized each time it sells investment securities because including both the principal and interest in each rollover amount would distort the sales factor by giving extra weight to its out-of-state sales. As stated in 45 IAC 3.1-1-50(5), “In some cases, certain gross receipts should be disregarded in determining the sales factor to effectuate an equitable apportionment.”

Taxpayer’s reliance on the general language contained in 45 IAC 3.1-1-55(e) notwithstanding, both the Indiana Tax Court and the Department have addressed this specific issue previously and – in each case – has rejected taxpayer’s argument.

FINDING

Taxpayer's protest is respectfully denied.

IV. Ten-Percent Negligence Penalty.

Taxpayer argues that it is entitled to an abatement of the ten-percent negligence penalty because it "acted with reasonable cause and without the willful intent to underpay Indiana taxes."

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

The Department is unable to agree with taxpayer's contention that its preparation of the original tax returns represented a reasonable interpretation of the tax law and that in preparing those returns it "exercised ordinary business care." The taxpayer's erroneous decision to include principal from the sale of short term investment resulted in more than 60 percent of its additional tax liability. Taxpayer and the Department may continue to disagree on the question of whether gross proceeds generated by these investments should be included in the sales factor, but this *identical* issue has been twice protested, twice denied, and unsuccessfully litigated in the Tax Court. The Department does not doubt taxpayer's good faith interpretation of the tax law, but it is unable to agree that taxpayer's decision to include gross investment receipts in yet a audit third cycle is indicative of the "reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." 45 IAC 15-22-2-(b).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2004-02ST

November 3, 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

Sales and Use Tax- Sale of Gasoline from a Metered Pump

Authority: IC 6-2.5-7-2, IC 6-2.5-7-3.

The taxpayer requests the department to rule on whether or not its proposed operating procedures comply with Indiana law.

STATEMENT OF FACTS

The taxpayer is a limited partnership. It has entered into agreements with retailers in Indiana to enable its customers access to retailers' sites. This access would allow said customers to use its cards. The taxpayer would take possession of the fuel purchased at the nozzle and would reimburse the retailer the following per gallon:

- Average oil price information service ("OPIS") daily price
- Posted freight allowance
- Commission
- Federal government excise tax/gallon
-

1. Diesel	.244
2. Kerosene	.244
3. Gasoline	.184
4. Gasohol	.132

- Indiana State Excise Tax/gallon

1. Diesel	.160
2. Kerosene	.160
3. Gasoline	.180
4. Gasohol	.180
- Indiana state oil inspection fee

1. Gasoline	.008
2. Gasohol	.008

- No prepaid sales tax or sales tax is reimbursed because this is an interstate transaction.

The taxpayer would bill the customers a weekly price based on OPIS weekly average plus a margin including all taxes unless exempt. The taxpayer would remit sales tax to Indiana based on what the customer was billed; the final retail price.

The taxpayer would pay Indiana the final sales tax due on the above described sales after taking credit for any legitimate sales tax-exempt sales made to agriculture customers, state and local governments, the federal government, non-profit organizations, parochial and public schools, and public transportation customers.

The taxpayer would continue to make reimbursements to the “retailer” as mentioned above with the understanding that they will have reported the related transactions as “sales for resale”; a non-sales taxable transaction. The taxpayer would pay the full sales tax to the state of Indiana.

DISCUSSION

IC 6-2.5-7-2 provides as follows:

Except as provided in section 2.5 of this chapter, a retail merchant who uses a metered pump to dispense gasoline or special fuel shall display on the pump the total price per unit of the gasoline or special fuel. Subject to the provisions of section 2.5 of this chapter; a retail merchant may not advertise the gasoline or special fuel at a price that is different than the price that he is required to display on the metered pump.

IC 6-2.5-7-3 provides as follows:

(a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$.001), of:

- (i) the price per unit before the addition of state and federal taxes; multiplied by
- (ii) six percent (6%). The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$.001), of:

- (i) the price per unit before the addition of state and federal taxes; multiplied by
- (ii) six percent (6%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

The law clearly requires that the metered pump display the total price of the gasoline or special fuel. All sales tax collected and remitted from a particular metered pump must correspond to the amount stated as the sales price on the pump. The taxpayer’s proposed method of operation would require that its customers take delivery of gasoline and other fuels from the same metered pumps that the retail merchants use to make other sales. The taxpayer’s customers could pay a different amount for the gasoline or special fuel than other persons receiving fuel from the metered pump. Therefore, the taxpayer’s proposed method of operation does not comply with Indiana’s sales tax law.

The law also requires the retail merchant to collect and remit the sales tax unless an exemption certificate is provided. The taxpayer’s proposed method of operations would have the taxpayer collecting and remitting the sales tax instead of the retail merchant. This also contradicts the clear requirements of the law.

RULING

The Department rules that the taxpayer’s proposed method of operations does not comply with the Indiana law.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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326 IAC 2-2-16	A	02-337	26 IR 1999	*ARR (27 IR 2500)	326 IAC 3-5-3	A	02-337	26 IR 2019	*ARR (27 IR 2500)
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326 IAC 2-5.1-2	RA	04-44	27 IR 3145	28 IR 791					*CPH (27 IR 2521)
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326 IAC 2-6.1-3	RA	04-44	27 IR 3149	28 IR 795					*CPH (27 IR 2521)
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326 IAC 2-6.1-7	RA	04-44	27 IR 3154	28 IR 801					28 IR 37
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326 IAC 2-7-18	A	02-337	26 IR 2007	*ARR (27 IR 2500)	326 IAC 5-1-2	A	02-337	26 IR 2026	*ARR (27 IR 2500)
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326 IAC 2-8-3	A	02-337	26 IR 2008	*ARR (27 IR 2500)	326 IAC 5-1-4	A	02-337	26 IR 2026	*ARR (27 IR 2500)
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326 IAC 2-9-2.5	RA	04-44	27 IR 3156	28 IR 802					*CPH (27 IR 2521)
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326 IAC 2-9-5	RA	04-44	27 IR 3158	28 IR 805	326 IAC 6-1-13	A	03-195	27 IR 2318	28 IR 115
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326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)	326 IAC 7-1.1-2	A	00-236	28 IR 632	*CPH (28 IR 982)
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326 IAC 2-9-8	RA	04-44	27 IR 3159	*ARR (27 IR 2500)	326 IAC 7-4-1.1	A	00-236	28 IR 632	*CPH (28 IR 982)
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326 IAC 2-9-9	RA	04-44	27 IR 3160	*ARR (27 IR 2500)					*CPH (27 IR 2521)
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326 IAC 2-9-10	RA	04-44	27 IR 3162	*ARR (27 IR 2500)	326 IAC 8-1-4	A	02-337	26 IR 2030	*ARR (27 IR 2500)
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326 IAC 2-9-11	RA	04-44	27 IR 3163	28 IR 810					*CPH (27 IR 2521)
326 IAC 2-9-12	RA	04-44	27 IR 3165	28 IR 811					28 IR 47
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326 IAC 8-9-2	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 51	326 IAC 13-1.1-13	A	02-337	26 IR 2064	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 79
326 IAC 8-9-3	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 51	326 IAC 13-1.1-14	A	02-337	26 IR 2065	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 80
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326 IAC 8-9-6	A	02-337	26 IR 2042	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 56	326 IAC 14-1-2	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 81
326 IAC 8-10-7	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 58	326 IAC 14-1-4	R	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 114
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326 IAC 10-1-4	A	02-337	26 IR 2057	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 71	326 IAC 14-9-8	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 85
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326 IAC 20-64	N	03-285	27 IR 2322	28 IR 121	327 IAC 2-1.5-16	A	03-129	27 IR 3660	
326 IAC 20-65	N	03-285	27 IR 2322	28 IR 121	327 IAC 2-1.5-20	A	03-129	27 IR 3662	
326 IAC 20-66	N	03-285	27 IR 2323	28 IR 122	327 IAC 2-4-3	A	03-129	27 IR 3663	
326 IAC 20-67	N	03-285	27 IR 2323	28 IR 122	327 IAC 5-1.5-72	A	03-129	27 IR 3663	
326 IAC 20-68	N	03-285	27 IR 2323	28 IR 122	327 IAC 5-2-1.5	A	03-129	27 IR 3663	
326 IAC 20-69	N	03-285	27 IR 2323	28 IR 122	327 IAC 5-2-11.1	A	03-129	27 IR 3664	
326 IAC 20-70	N	03-284	27 IR 1620	*CPH (27 IR 1937) 28 IR 120	327 IAC 5-2-11.2	A	03-129	27 IR 3668	
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326 IAC 20-71	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234)	327 IAC 5-2-11.5	A	03-129	27 IR 3679	
326 IAC 20-72	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234)	327 IAC 5-2-11.6	A	03-129	27 IR 3689	
326 IAC 20-73	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234)	327 IAC 5-2-13	A	03-129	27 IR 3694	
					327 IAC 5-2-15	A	03-129	27 IR 3694	
					327 IAC 5-3.5	N	03-130	28 IR 650	*CPH (28 IR 1197)
					327 IAC 8-2-1	A	04-13	28 IR 1206	
					327 IAC 8-2-4	A	04-13	28 IR 1210	
					327 IAC 8-2-4.1	A	04-13	28 IR 1212	
					327 IAC 8-2-4.2	A	04-13	28 IR 1217	
					327 IAC 8-2-5.1	A	04-13	28 IR 1220	
					327 IAC 8-2-5.2	A	04-13	28 IR 1222	
					327 IAC 8-2-5.5	A	04-13	28 IR 1225	
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327 IAC 8-2-10.3	N	04-13	28 IR 1237	
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327 IAC 8-2-46	A	04-13	28 IR 1242	
327 IAC 8-2.1-3	A	04-13	28 IR 1244	
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327 IAC 8-2.6-2	A	04-13	28 IR 1269	
327 IAC 8-2.6-2.1	N	04-13	28 IR 1271	
327 IAC 8-2.6-3	A	04-13	28 IR 1273	
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327 IAC 17	N	04-228	28 IR 1288	

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328 IAC 1-1-2	A	02-204	27 IR 2778	*CPH (27 IR 3095) 28 IR 123
328 IAC 1-1-3	A	02-204	27 IR 2778	*CPH (27 IR 3095) 28 IR 123
328 IAC 1-1-4	A	02-204	27 IR 2778	*CPH (27 IR 3095) 28 IR 124
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328 IAC 1-1-8	R	02-204	27 IR 2797	*CPH (27 IR 3095) 28 IR 144
328 IAC 1-1-8.3	N	02-204	27 IR 2779	*CPH (27 IR 3095) 28 IR 124
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328 IAC 1-3-4	A	02-204	27 IR 2783	*ERR (28 IR 608) *CPH (27 IR 3095) 28 IR 129
328 IAC 1-3-5	A	02-204	27 IR 2784	*CPH (27 IR 3095) 28 IR 129
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328 IAC 1-4-1	A	02-204	27 IR 2791	*CPH (27 IR 3095) 28 IR 137 *ERR (28 IR 608)

328 IAC 1-4-1.5	N	02-204		†† 28 IR 140
328 IAC 1-4-3	A	02-204	27 IR 2794	*CPH (27 IR 3095) 28 IR 141 *ERR (28 IR 608)
328 IAC 1-4-4	N	02-204	27 IR 2795	*CPH (27 IR 3095) 28 IR 141 *ERR (28 IR 608)
328 IAC 1-4-5	N	02-204		†† 28 IR 141
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328 IAC 1-5-2	A	02-204	27 IR 2796	*CPH (27 IR 3095) 28 IR 142
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328 IAC 1-6-1	A	02-204	27 IR 2796	*CPH (27 IR 3095) 28 IR 143
328 IAC 1-6-2	A	02-204	27 IR 2796	*CPH (27 IR 3095) 28 IR 143
328 IAC 1-7-2	A	02-204	27 IR 2797	*CPH (27 IR 3095) 28 IR 144
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329 IAC 3.1-6-2	A	03-312	27 IR 4111	
329 IAC 3.1-6-3	A	03-312	27 IR 4112	
329 IAC 3.1-7.5	N	03-312	27 IR 4112	
329 IAC 3.1-12-2	A	03-312	27 IR 4113	
329 IAC 3.1-13-2	A	03-312	27 IR 4114	
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) 28 IR 145
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) 28 IR 145
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) 28 IR 177
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) 28 IR 177

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329 IAC 9-1-10.4	N	01-161	26 IR 1209	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-1-10.6	N	01-161	27 IR 3177 26 IR 1209	28 IR 146 *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 9-1-25	A	01-161	27 IR 3178 26 IR 1210	28 IR 146 *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 9-1-10.8	N	01-161	27 IR 3178 26 IR 1210	28 IR 146 *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 9-1-27	A	01-161	27 IR 3178 26 IR 1210	28 IR 146 *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 9-1-14	A	01-161	27 IR 3178 26 IR 1210	28 IR 146 *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 9-1-29.1	R	01-161	27 IR 3178 26 IR 1239	28 IR 147 *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 9-1-14.1	R	01-161	27 IR 3178 26 IR 1239	28 IR 146 *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 9-1-36	A	01-161	27 IR 3209 26 IR 1210	28 IR 177 *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 9-1-14.3	N	01-161	27 IR 3209 26 IR 1210	28 IR 177 *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 9-1-36.5 329 IAC 9-1-39.5	N N	01-161 01-161	27 IR 3179 27 IR 3179 26 IR 1211	28 IR 147 *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 9-1-14.5	N	01-161	27 IR 3178 26 IR 1210	28 IR 146 *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	R	01-161	27 IR 3179 26 IR 1239	28 IR 147 *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 3178	28 IR 146				27 IR 3209	28 IR 177

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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)
			27 IR 3209	28 IR 177				27 IR 3183	28 IR 151
329 IAC 9-1-41.5	N	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-3-1	A	01-161	26 IR 1216	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
			27 IR 3179	28 IR 147				27 IR 3184	28 IR 152
329 IAC 9-1-42.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-3-2	N	01-161	26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
			27 IR 3209	28 IR 177				27 IR 3187	28 IR 155
329 IAC 9-1-47	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *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	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)
			27 IR 3179	28 IR 147				27 IR 3187	28 IR 155
329 IAC 9-1-47.1	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *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	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 3179	28 IR 147				27 IR 3187	28 IR 155
329 IAC 9-2-1	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *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	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 3179	28 IR 147				27 IR 3187	28 IR 155
329 IAC 9-2-2	A	01-161	26 IR 1214	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *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	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	28 IR 148				27 IR 3188	28 IR 156
				*ERR (28 IR 608)				27 IR 3188	28 IR 156

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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	27 IR 3189 28 IR 157 *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	27 IR 3192 28 IR 160 *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	27 IR 3189 28 IR 158 *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	27 IR 3193 28 IR 161 *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	27 IR 3190 28 IR 158 *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	27 IR 3196 28 IR 164 *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	27 IR 3191 28 IR 160 *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	27 IR 3196 28 IR 165 *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	27 IR 3209 28 IR 177 *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	27 IR 3199 28 IR 168 *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	27 IR 3192 28 IR 160 *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	27 IR 3209 28 IR 177 *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)
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405 IAC 5-19-1	A	04-178	28 IR 261	
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405 IAC 5-19-10	A	04-178	28 IR 262	
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405 IAC 6-4-2	A	04-95	27 IR 3210	*NRA (27 IR 4044) 28 IR 180
405 IAC 6-4-3	A	04-95	27 IR 3211	*NRA (27 IR 4044) 28 IR 180
405 IAC 6-5-1	A	04-95	27 IR 3211	*NRA (27 IR 4044) 28 IR 181
405 IAC 6-5-2	A	04-95	27 IR 3211	*NRA (27 IR 4044) 28 IR 181
405 IAC 6-5-3	A	04-95	27 IR 3211	*NRA (27 IR 4044) 28 IR 181
405 IAC 6-5-4	A	04-95	27 IR 3212	*NRA (27 IR 4044) 28 IR 181
405 IAC 6-5-6	A	04-95	27 IR 3212	*NRA (27 IR 4044) 28 IR 182

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 6-12-0.5	N	03-276	27 IR 3212	28 IR 818
410 IAC 6-12-1	A	03-276	27 IR 3212	28 IR 818
410 IAC 6-12-2	R	03-276	27 IR 3216	28 IR 821
410 IAC 6-12-3	A	03-276	27 IR 3213	28 IR 818
410 IAC 6-12-3.1	N	03-276	27 IR 3213	28 IR 818
410 IAC 6-12-3.2	N	03-276	27 IR 3213	28 IR 818
410 IAC 6-12-4	A	03-276	27 IR 3213	28 IR 818
410 IAC 6-12-5	R	03-276	27 IR 3216	28 IR 821
410 IAC 6-12-6	R	03-276	27 IR 3216	28 IR 821
410 IAC 6-12-7	A	03-276	27 IR 3213	28 IR 818
410 IAC 6-12-8	A	03-276	27 IR 3213	28 IR 819
410 IAC 6-12-9	A	03-276	27 IR 3214	28 IR 820
410 IAC 6-12-10	A	03-276	27 IR 3215	28 IR 820
410 IAC 6-12-11	A	03-276	27 IR 3215	28 IR 820
410 IAC 6-12-12	A	03-276	27 IR 3215	28 IR 820
410 IAC 6-12-13	A	03-276	27 IR 3215	28 IR 820
410 IAC 6-12-14	A	03-276	27 IR 3215	28 IR 821
410 IAC 6-12-15	R	03-276	27 IR 3216	28 IR 821
410 IAC 6-12-17	N	03-276	27 IR 3216	28 IR 821
410 IAC 7-20	R	04-60	27 IR 3301	28 IR 906
410 IAC 7-23-1	A	04-62	27 IR 3301	28 IR 908
410 IAC 7-24	N	04-60	27 IR 3216	28 IR 822
410 IAC 16.2-1.1-19.3	N	04-7	27 IR 2542	28 IR 189
410 IAC 16.2-3.1-2	A	03-297	27 IR 2536	28 IR 182
	A	04-7	27 IR 2542	28 IR 189
410 IAC 16.2-3.1-53	N	04-7	27 IR 2545	28 IR 192
410 IAC 16.2-5-1.1	A	03-297	27 IR 2539	28 IR 185
410 IAC 16.2-5-1.4	A	04-7	27 IR 2547	28 IR 193
410 IAC 16.2-5-13	N	04-7	27 IR 2548	28 IR 194
410 IAC 21-3-6	R	04-161	28 IR 657	
410 IAC 21-3-8	A	04-161	28 IR 656	
410 IAC 21-3-9	A	04-161	28 IR 656	

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

440 IAC 7.5-1-1	A	04-229	28 IR 657	
440 IAC 7.5-2-1	A	04-229	28 IR 660	
440 IAC 7.5-2-8	A	04-229	28 IR 661	
440 IAC 7.5-2-12	A	04-229	28 IR 661	
440 IAC 7.5-2-13	A	04-229	28 IR 662	
440 IAC 7.5-3-3	A	04-229	28 IR 663	
440 IAC 7.5-3-4	A	04-229	28 IR 664	
440 IAC 7.5-3-7	A	04-229	28 IR 664	
440 IAC 7.5-4-7	A	04-229	28 IR 664	
440 IAC 7.5-4-8	A	04-229	28 IR 665	
440 IAC 7.5-5-1	A	04-229	28 IR 665	

440 IAC 7.5-8-1	A	04-229	28 IR 666	
440 IAC 7.5-8-2	A	04-229	28 IR 666	
440 IAC 7.5-8-3	A	04-229	28 IR 666	
440 IAC 7.5-9-1	A	04-229	28 IR 666	
440 IAC 7.5-9-2	A	04-229	28 IR 666	
440 IAC 7.5-9-3	A	04-229	28 IR 667	
440 IAC 7.5-10-1	A	04-229	28 IR 667	
440 IAC 7.5-10-2	A	04-229	28 IR 667	
440 IAC 7.5-10-3	N	04-229	28 IR 667	
440 IAC 7.5-11	N	04-229	28 IR 667	

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 1-10	N	03-231	27 IR 3303	*NRA (28 IR 233) 28 IR 910
460 IAC 1.1	N	03-245	27 IR 2799	*AROC (27 IR 3344) *NRA (28 IR 233) 28 IR 912
460 IAC 1-3.4	N	04-75	28 IR 1002	
460 IAC 1-8-3	A	04-199	28 IR 1007	
460 IAC 1-8-11	N	04-199	28 IR 1007	
460 IAC 1-8-12	N	04-199	28 IR 1008	
460 IAC 1-8-13	N	04-199	28 IR 1008	
460 IAC 1-11	N	04-136	28 IR 1004	
460 IAC 2-2.1	N	04-76	27 IR 3701	*NRA (28 IR 233)
460 IAC 3.5-2-3	N	04-269	28 IR 1303	

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-1.1-0.5	A	04-77	27 IR 2837	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-1	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-2	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-4	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-6	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-7.2	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-7.4	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-8	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-9	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-10	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-12	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-12.5	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-13	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-14	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-15	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-16	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-20	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-20.1	N	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-22.5	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-24	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317)

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470 IAC 3-1.1-28	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.2-5	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-28.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.2-6	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-29	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.2-7	A	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-29.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.2-8	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-32	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.3-1	A	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-32.1	N	04-77	27 IR 2843	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.3-2	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-33	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.3-3	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-33.5	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.3-4	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-34	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.3-5	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-35	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.3-6	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-36.5	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-1.3-7	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317)
470 IAC 3-1.1-36.6	N	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-4.8	N	03-232	27 IR 1626	*AROC (27 IR 2882) *NRA (27 IR 4044) 28 IR 196
470 IAC 3-1.1-37	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317)	470 IAC 3-18	N	03-233	27 IR 1627	*AROC (27 IR 3345) *NRA (28 IR 233) 28 IR 950
470 IAC 3-1.1-38	A	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317)	TITLE 511 INDIANA STATE BOARD OF EDUCATION				
470 IAC 3-1.1-38.5	N	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 1-3-1	A	04-101	27 IR 3305	28 IR 965
470 IAC 3-1.1-39	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 1-9	RA	04-47	27 IR 2879	28 IR 323
470 IAC 3-1.1-40	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 5-2-4.5	N	04-214	28 IR 668	
470 IAC 3-1.1-41	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6-7-1	RA	04-47	27 IR 2879	28 IR 323
470 IAC 3-1.1-41.1	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6-7-6	RA	04-47	27 IR 2879	28 IR 323
470 IAC 3-1.1-41.2	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6-7-6.5	A	04-36	27 IR 2552	28 IR 959
470 IAC 3-1.1-42	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6-7.1	N	04-277	28 IR 1303	
470 IAC 3-1.1-44	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-2-2.5	RA	04-47	27 IR 2879	28 IR 323
470 IAC 3-1.1-44.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5-4	RA	04-47	27 IR 2879	28 IR 323
470 IAC 3-1.1-45	A	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5.1-2	A	04-36	27 IR 2553	28 IR 960
470 IAC 3-1.1-45.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5.1-3	A	04-36	27 IR 2553	28 IR 960
470 IAC 3-1.1-46	A	04-77	27 IR 2851	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5.1-4	A	04-36	27 IR 2554	28 IR 961
470 IAC 3-1.1-47	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5.1-5	A	04-36	27 IR 2555	28 IR 962
470 IAC 3-1.1-48	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5.1-6	A	04-36	27 IR 2555	28 IR 962
470 IAC 3-1.1-50	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5.1-8	A	04-36	27 IR 2556	28 IR 963
470 IAC 3-1.1-51	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5.1-9	A	04-36	27 IR 2557	28 IR 964
470 IAC 3-1.2-2	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 6.1-5.1-10.1	A	04-22	27 IR 2550	28 IR 957
470 IAC 3-1.2-3	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317)	511 IAC 8	RA	04-47	27 IR 2879	28 IR 323
470 IAC 3-1.2-3.2	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317)	TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD				
470 IAC 3-1.2-4	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317)	514 IAC	N	03-298	27 IR 1634	28 IR 197
					TITLE 515 PROFESSIONAL STANDARDS BOARD				
					515 IAC 1-4-1	A	03-320	27 IR 2558	*ARR (28 IR 610)
					515 IAC 1-4-2	A	03-320	27 IR 2558	*ARR (28 IR 610)
					515 IAC 8-1-23	A	03-321	27 IR 2330	*ARR (28 IR 610)
					515 IAC 8-1-42	A	03-321	27 IR 2330	*ARR (28 IR 610)
					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	*ARR (28 IR 610)
					515 IAC 10	N	04-197	28 IR 263	
					515 IAC 12	N	04-141	27 IR 3703	
					TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY				
					540 IAC 1-1-11	RA	04-54	27 IR 2880	*CPH (27 IR 3096) 28 IR 324
					540 IAC 1-1-17	RA	04-54	27 IR 2880	*CPH (27 IR 3096) 28 IR 324

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TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

646 IAC 3-1-12	N	03-317	27 IR 2858	28 IR 560
646 IAC 3-1-13	N	03-317	27 IR 2858	28 IR 561
646 IAC 3-4-11	N	03-317	27 IR 2858	28 IR 561
646 IAC 3-5-1	A	03-317	27 IR 2859	28 IR 561

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1-5.1	A	04-138	28 IR 1009	*AROC (28 IR 1073)
655 IAC 1-2.1-3	A	04-138	28 IR 1012	*AROC (28 IR 1073)
655 IAC 1-2.1-4	A	04-138	28 IR 1012	*AROC (28 IR 1073)
655 IAC 1-2.1-5	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.1	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.2	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.3	A	04-138	28 IR 1014	*AROC (28 IR 1073)
655 IAC 1-2.1-6.4	A	04-138	28 IR 1014	*AROC (28 IR 1073)
655 IAC 1-2.1-7.1	N	04-138	28 IR 1014	*AROC (28 IR 1073)
655 IAC 1-2.1-8	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-9	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-10	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-11	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-12	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-13	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-14	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-15	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-20	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-22	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-23	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-23.1	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.1	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.2	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.3	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-75	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.2	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.3	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.4	A	04-138	28 IR 1021	*AROC (28 IR 1073)
655 IAC 1-2.1-75.5	A	04-138	28 IR 1021	*AROC (28 IR 1073)
655 IAC 1-2.1-76.1	A	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-76.2	R	04-138	28 IR 1029	*AROC (28 IR 1073)
655 IAC 1-2.1-76.3	R	04-138	28 IR 1029	*AROC (28 IR 1073)
655 IAC 1-2.1-96	N	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-97	N	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-98	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-99	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-100	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-101	N	04-138	28 IR 1024	*AROC (28 IR 1073)
655 IAC 1-2.1-102	N	04-138	28 IR 1024	*AROC (28 IR 1073)
655 IAC 1-2.1-103	N	04-138	28 IR 1025	*AROC (28 IR 1073)
655 IAC 1-2.1-104	N	04-138	28 IR 1025	*AROC (28 IR 1073)
655 IAC 1-2.1-105	N	04-138	28 IR 1026	*AROC (28 IR 1073)
655 IAC 1-2.1-106	N	04-138	28 IR 1026	*AROC (28 IR 1073)
655 IAC 1-2.1-107	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-108	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-109	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-110	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)
655 IAC 1-4-2	A	04-138	28 IR 1028	*AROC (28 IR 1073)

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

675 IAC 14-4.2	R	04-194	28 IR 312	
675 IAC 14-4.2-3				*ERR (28 IR 970)
675 IAC 14-4.2-19.5				*ERR (28 IR 970)
675 IAC 14-4.2-20.5				*ERR (28 IR 970)
675 IAC 14-4.2-21				*ERR (28 IR 970)
675 IAC 14-4.2-26.5				*ERR (28 IR 970)
675 IAC 14-4.2-29				*ERR (28 IR 970)

675 IAC 14-4.2-30	A	04-8	27 IR 2333	28 IR 562
675 IAC 14-4.2-53.7				*ERR (28 IR 970)
675 IAC 14-4.2-69.5				*ERR (28 IR 970)
675 IAC 14-4.2-69.6				*ERR (28 IR 970)
675 IAC 14-4.2-73.5				*ERR (28 IR 970)
675 IAC 14-4.2-81.2				*ERR (28 IR 970)
675 IAC 14-4.2-89.2	A	04-8	27 IR 2333	28 IR 562
675 IAC 14-4.2-89.6				*ERR (28 IR 970)
675 IAC 14-4.2-89.8				*ERR (28 IR 970)
675 IAC 14-4.2-107				*ERR (28 IR 970)
675 IAC 14-4.3	N	04-194	28 IR 268	
675 IAC 15-1-1	R	04-227	28 IR 1053	
675 IAC 15-1-2	R	04-227	28 IR 1053	
675 IAC 15-1-3	R	04-227	28 IR 1053	
675 IAC 15-1-5	R	04-227	28 IR 1053	
675 IAC 15-1-6	R	04-227	28 IR 1054	
675 IAC 15-1-7	R	04-227	28 IR 1054	
675 IAC 15-1-8.1	R	04-227	28 IR 1054	
675 IAC 15-1-10	R	04-227	28 IR 1054	
675 IAC 15-1-11	R	04-227	28 IR 1054	
675 IAC 15-1-12	R	04-227	28 IR 1054	
675 IAC 15-1-13	R	04-227	28 IR 1054	
675 IAC 15-1-14	R	04-227	28 IR 1054	
675 IAC 15-1-16	R	04-227	28 IR 1054	
675 IAC 15-1-17	R	04-227	28 IR 1054	
675 IAC 15-1-19	R	04-227	28 IR 1054	
675 IAC 15-1-20	R	04-227	28 IR 1054	
675 IAC 15-1-21	R	04-227	28 IR 1054	
675 IAC 15-1-22	R	04-227	28 IR 1054	
675 IAC 15-1.1	N	04-227	28 IR 1037	
675 IAC 15-1.2	N	04-227	28 IR 1039	
675 IAC 15-1.3	N	04-227	28 IR 1046	
675 IAC 15-1.4	N	04-227	28 IR 1048	
675 IAC 15-1.5	N	04-227	28 IR 1049	
675 IAC 15-1.6	N	04-227	28 IR 1051	
675 IAC 15-1.7	N	04-227	28 IR 1052	
675 IAC 17-1.6-12	A	03-71	26 IR 3737	
675 IAC 18-1.4-10.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-11.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-32.3	N	04-217	28 IR 1309	
675 IAC 18-1.4-32.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-49.5	N	04-217	28 IR 1309	
675 IAC 22-2.2-3	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-4	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-5	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-6	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-7	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-8	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-9	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-10	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-11	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-12	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-13	RA	04-19	27 IR 2339	28 IR 324
675 IAC 22-2.2-15	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-16	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-17	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-18	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-21	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-22	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-23	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-24	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-25	RA	04-19	27 IR 2340	28 IR 324
675 IAC 22-2.2-26	N	04-196	28 IR 1029	
675 IAC 22-2.2-49.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-107.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-134.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-183	RA	04-19	27 IR 2340	28 IR 324
	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-221.5	R	04-56	27 IR 2864	*CPH (28 IR 982)

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675 IAC 22-2.2-240.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-241.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-243.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-245.2	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-245.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-365.2	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-365.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-368.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-369.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-378.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-412.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-437.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-437.7	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-443.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-511.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-515.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-540	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-29.5	N	04-56	27 IR 2860	*CPH (28 IR 982)
675 IAC 22-2.3-35.5	N	04-56	27 IR 2860	*CPH (28 IR 982)
675 IAC 22-2.3-36	A	04-56	27 IR 2860	*CPH (28 IR 982)
675 IAC 22-2.3-36.3	N	04-56	27 IR 2861	*CPH (28 IR 982)
675 IAC 22-2.3-36.4	N	04-56	27 IR 2861	*CPH (28 IR 982)
675 IAC 22-2.3-36.6	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-36.8	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-140.5	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-147.5	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-147.6	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-148	A	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-148.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-237.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-298.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-304.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 25-1-7.2	N	04-218	28 IR 1310	
675 IAC 25-1-7.4	N	04-218	28 IR 1310	
675 IAC 25-1-7.6	N	04-218	28 IR 1310	
675 IAC 25-1-9.1	N	04-218	28 IR 1310	
675 IAC 25-1-9.3	N	04-218	28 IR 1310	
675 IAC 25-1-9.5	N	04-218	28 IR 1310	
675 IAC 25-1-9.7	N	04-218	28 IR 1310	
675 IAC 25-1-9.9	N	04-218	28 IR 1310	
675 IAC 26	N	04-196	28 IR 1031	

TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD

685 IAC 1	RA	04-124	27 IR 3343	28 IR 1072
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TITLE 760 DEPARTMENT OF INSURANCE

760 IAC 1-21-2	A	04-140	28 IR 1311	
760 IAC 1-21-3	A	04-140	28 IR 1311	
760 IAC 1-21-4	A	04-140	28 IR 1311	
760 IAC 1-21-5	A	04-140	28 IR 1311	
760 IAC 1-21-8	A	04-140	28 IR 1312	
760 IAC 1-21-10	N	04-140	28 IR 1313	
760 IAC 1-21-11	N	04-140	28 IR 1313	
760 IAC 1-50-3	A	04-139	27 IR 4136	
760 IAC 1-50-4	A	04-139	27 IR 4136	
760 IAC 1-50-5	A	04-139	27 IR 4137	
760 IAC 1-60-1	RA	04-143	27 IR 3706	28 IR 1072
760 IAC 1-60-2	RA	04-143	27 IR 3706	28 IR 1072
760 IAC 1-60-4	RA	04-143	27 IR 3706	28 IR 1072
760 IAC 1-70	N	04-39	27 IR 2560	
			28 IR 314	
760 IAC 2-1-1	A	03-303	27 IR 3306	28 IR 563
760 IAC 2-2-1.5	N	03-303	27 IR 3306	28 IR 563
760 IAC 2-2-3.1	N	03-303	27 IR 3307	28 IR 563
760 IAC 2-2-3.2	N	03-303	27 IR 3307	28 IR 563
760 IAC 2-2-3.3	N	03-303	27 IR 3307	28 IR 564
760 IAC 2-2-3.4	N	03-303	27 IR 3307	28 IR 564
760 IAC 2-2-3.5	N	03-303	27 IR 3307	28 IR 564
760 IAC 2-2-3.6	N	03-303	27 IR 3307	28 IR 564

760 IAC 2-2-3.7	N	03-303	27 IR 3307	28 IR 564
760 IAC 2-2-3.8	N	03-303	27 IR 3308	28 IR 565
760 IAC 2-2-8	A	03-303	27 IR 3308	28 IR 565
760 IAC 2-3-1	A	03-303	27 IR 3308	28 IR 565
760 IAC 2-3-2	A	03-303	27 IR 3308	28 IR 565
760 IAC 2-3-4	A	03-303	27 IR 3309	28 IR 566
760 IAC 2-3-6	A	03-303	27 IR 3310	28 IR 567
760 IAC 2-3-7	N	03-303	27 IR 3310	28 IR 567
760 IAC 2-3-8	N	03-303	27 IR 3311	28 IR 567
760 IAC 2-4-1	A	03-303	27 IR 3311	28 IR 568
760 IAC 2-4-2	N	03-303	27 IR 3312	28 IR 569
				*ERR (28 IR 609)
760 IAC 2-7-1	A	03-303	27 IR 3313	28 IR 570
760 IAC 2-8-1	A	03-303	27 IR 3314	28 IR 570
760 IAC 2-8-2	A	03-303	27 IR 3314	28 IR 571
760 IAC 2-8-3	A	03-303	27 IR 3314	28 IR 571
760 IAC 2-8-4	A	03-303	27 IR 3315	28 IR 572
760 IAC 2-8-6	N	03-303	27 IR 3316	28 IR 572
760 IAC 2-9-1	A	03-303	27 IR 3316	28 IR 572
760 IAC 2-10-1	A	03-303	27 IR 3316	28 IR 573
760 IAC 2-13-1	A	03-303	27 IR 3317	28 IR 573
760 IAC 2-15-1	A	03-303	27 IR 3317	28 IR 574
				*ERR (28 IR 609)
760 IAC 2-15.5	N	03-303	27 IR 3319	28 IR 575
760 IAC 2-16-1	A	03-303	27 IR 3320	28 IR 576
760 IAC 2-16.1	N	03-303	27 IR 3320	28 IR 576
760 IAC 2-17-1	A	03-303	27 IR 3323	28 IR 580
760 IAC 2-18-1	A	03-303	27 IR 3325	28 IR 582
760 IAC 2-19-2	A	03-303	27 IR 3325	28 IR 582
760 IAC 2-19.5	N	03-303	27 IR 3325	28 IR 582
760 IAC 2-20-10	A	03-303	27 IR 3329	28 IR 585
760 IAC 2-20-31.1	A	03-303	27 IR 3329	28 IR 586
760 IAC 2-20-34	A	03-303	27 IR 3329	28 IR 586
760 IAC 2-20-35	A	03-303	27 IR 3332	28 IR 589
760 IAC 2-20-36.1	A	03-303	27 IR 3332	28 IR 589
760 IAC 2-20-36.2	A	03-303	27 IR 3333	28 IR 590
760 IAC 2-20-37.2	A	03-303	27 IR 3334	28 IR 590
760 IAC 2-20-37.3	N	03-303	27 IR 3334	28 IR 590
760 IAC 2-20-38.1	A	03-303	27 IR 3334	28 IR 590
760 IAC 2-20-42	A	03-303	27 IR 3335	28 IR 591

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

804 IAC 1.1-1-1	A	04-156	28 IR 1054
804 IAC 1.1-8	N	04-156	28 IR 1055

TITLE 808 STATE BOXING COMMISSION

808 IAC 1-3-6	A	03-226	27 IR 2563	28 IR 198
808 IAC 1-5-1	A	03-226	27 IR 2563	28 IR 198
808 IAC 1-5-2	A	03-226	27 IR 2563	28 IR 198
808 IAC 2-1-5	A	03-226	27 IR 2564	28 IR 198
808 IAC 2-1-12	A	03-226	27 IR 2564	28 IR 199
808 IAC 2-7-14	A	03-226	27 IR 2564	28 IR 199
808 IAC 2-8-7	R	03-226	27 IR 2566	28 IR 200
808 IAC 2-9-5	A	03-226	27 IR 2564	28 IR 199
808 IAC 2-12-0.5	N	03-227	27 IR 2566	*ARR (28 IR 215)
				28 IR 201
808 IAC 2-12-2	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 201
808 IAC 2-12-3	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 201
808 IAC 2-12-4	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 202
808 IAC 2-12-5	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 202
808 IAC 2-12-6	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 202
808 IAC 2-12-7	N	03-227	27 IR 2568	*ARR (28 IR 215)
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808 IAC 2-12-8	N	03-227	27 IR 2568	*ARR (28 IR 215)
808 IAC 2-18-1	A	03-226	27 IR 2565	28 IR 199
808 IAC 2-22-1	A	03-226	27 IR 2565	28 IR 199

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-3-1	A	04-254	28 IR 1059
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TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 0.5-2-3	A	04-233	28 IR 670	*AROC (28 IR 1073)
828 IAC 1-5-6	N	04-189	28 IR 669	
828 IAC 5	N	04-233	28 IR 671	*AROC (28 IR 1073)

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-1	RA	04-6	27 IR 2340	28 IR 325
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TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

844 IAC 6-1-2	A	03-262	27 IR 1284	28 IR 209
844 IAC 6-1-4	A	03-261	27 IR 1635	*CPH (27 IR 2300) 28 IR 203
844 IAC 6-3-1	A	03-261	27 IR 1636	*CPH (27 IR 2300) 28 IR 203
844 IAC 6-3-2	A	03-261	27 IR 1636	*CPH (27 IR 2300) 28 IR 204
844 IAC 6-3-4	A	03-261	27 IR 1637	*CPH (27 IR 2300) 28 IR 204
844 IAC 6-3-5	A	03-261	27 IR 1637	*CPH (27 IR 2300) 28 IR 205
844 IAC 6-3-6	N	03-261	27 IR 1638	*CPH (27 IR 2300) 28 IR 205
844 IAC 6-4-3	A	03-261	27 IR 1638	*CPH (27 IR 2300) 28 IR 206
844 IAC 6-6-1	R	03-261	27 IR 1642	*CPH (27 IR 2300) 28 IR 209
844 IAC 6-6-2	R	03-261	27 IR 1642	*CPH (27 IR 2300) 28 IR 209
844 IAC 6-6-3	A	03-261	27 IR 1638	*CPH (27 IR 2300) 28 IR 206
844 IAC 6-6-4	A	03-261	27 IR 1639	*CPH (27 IR 2300) 28 IR 206
844 IAC 6-7-2	A	03-261	27 IR 1639	*CPH (27 IR 2300) 28 IR 207
844 IAC 10-4-1	A	03-329	27 IR 2568	28 IR 211
844 IAC 12-5-4	A	04-17	28 IR 316	

TITLE 845 BOARD OF PODIATRIC MEDICINE

845 IAC 1-5-3	A	04-134	28 IR 317
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TITLE 848 INDIANA STATE BOARD OF NURSING

848 IAC 1-1-6	A	04-97	28 IR 674	
848 IAC 1-1-7	A	04-97	28 IR 675	
848 IAC 1-1-2.1	A	04-65	27 IR 2865	28 IR 593
848 IAC 1-2-1	A	04-65	27 IR 2866	28 IR 594
848 IAC 1-2-5	A	04-65	27 IR 2866	28 IR 594
848 IAC 1-2-6	A	04-65	27 IR 2867	28 IR 595
848 IAC 1-2-7	A	04-65	27 IR 2868	28 IR 596
848 IAC 1-2-8	A	04-65	27 IR 2868	28 IR 596
848 IAC 1-2-8.5	N	04-65	27 IR 2868	28 IR 596
848 IAC 1-2-9	A	04-65	27 IR 2869	28 IR 597
848 IAC 1-2-10	A	04-65	27 IR 2869	28 IR 597
848 IAC 1-2-12	A	04-65	27 IR 2870	28 IR 598
848 IAC 1-2-13	A	04-65	27 IR 2870	28 IR 598
848 IAC 1-2-14	A	04-65	27 IR 2870	28 IR 599
848 IAC 1-2-16	A	04-65	27 IR 2871	28 IR 599
848 IAC 1-2-17	A	04-65	27 IR 2872	28 IR 600
848 IAC 1-2-18	A	04-65	27 IR 2872	28 IR 600
848 IAC 1-2-19	A	04-65	27 IR 2873	28 IR 601
848 IAC 1-2-20	A	04-65	27 IR 2873	28 IR 601
848 IAC 1-2-21	A	04-65	27 IR 2873	28 IR 602
848 IAC 1-2-22	A	04-65	27 IR 2874	28 IR 602

848 IAC 1-2-23	A	04-65	27 IR 2874	28 IR 602
848 IAC 1-2-24	A	04-65	27 IR 2874	28 IR 603
848 IAC 6	R	04-97	28 IR 675	

TITLE 856 INDIANA BOARD OF PHARMACY

856 IAC 1-30-2	A	04-173	28 IR 317	
856 IAC 1-30-3	A	04-173	28 IR 318	
856 IAC 1-30-4.1	N	04-173	28 IR 318	
856 IAC 1-30-4.2	N	04-173	28 IR 318	
856 IAC 1-30-4.3	N	04-173	28 IR 318	
856 IAC 1-30-4.4	N	04-173	28 IR 318	
856 IAC 1-30-4.5	N	04-173	28 IR 318	
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856 IAC 1-30-9	A	04-173	28 IR 320	
856 IAC 1-30-14	A	04-173	28 IR 320	
856 IAC 1-30-17	A	04-173	28 IR 321	
856 IAC 1-30-18	A	04-173	28 IR 321	
856 IAC 1-33-1	A	03-326	27 IR 2073	27 IR 3073

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

864 IAC 1.1-2-4	A	03-301	27 IR 2569	28 IR 603
864 IAC 1.1-4.1-9	A	03-301		†28 IR 603
864 IAC 1.1-12-1	A	03-301	27 IR 2569	28 IR 604
864 IAC 1.1-12-2	N	03-301	27 IR 2570	28 IR 604

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

865 IAC 1-11-1	A	03-300	27 IR 2570	28 IR 605
	A	04-175	28 IR 1059	

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

872 IAC 1-1-6.1	A	04-41	27 IR 2574	28 IR 212
	A	04-171	27 IR 4138	28 IR 1182
872 IAC 1-3-3.3	A	04-98	27 IR 3336	28 IR 605
872 IAC 1-3-16	A	04-5	27 IR 2335	28 IR 211
872 IAC 1-6	N	03-270	27 IR 2571	*AROC (27 IR 4141) 28 IR 966

TITLE 876 INDIANA REAL ESTATE COMMISSION

876 IAC 2-18	N	03-256	27 IR 2575	28 IR 213
876 IAC 3-2-7	A	03-255	27 IR 2574	28 IR 212

TITLE 878 HOME INSPECTORS LICENSING BOARD

878 IAC	N	04-191	28 IR 1060	*CPH (28 IR 1197)
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TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

888 IAC 1.1-6-1	A	04-74	27 IR 2875	28 IR 606
	A	04-137	27 IR 3704	28 IR 607

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

905 IAC 1-5.2-9.2	A	04-111	27 IR 3337	
905 IAC 1-15.2-3	A	04-110	27 IR 3337	
905 IAC 1-26-3	N	04-112	27 IR 3338	
905 IAC 1-43	RA	04-14	27 IR 2579	*CPH (27 IR 3096) 28 IR 1316
905 IAC 1-44	RA	04-109	27 IR 3343	28 IR 1316
905 IAC 1-45-2	A	03-319	27 IR 2576	*CPH (27 IR 3096) *AROC (28 IR 1317)
905 IAC 1-45-3	A	03-319	27 IR 2576	*CPH (27 IR 3096) *AROC (28 IR 1317)
905 IAC 1-46	N	03-279	27 IR 1291	*ARR (27 IR 4024) *AROC (27 IR 4141) 28 IR 969
905 IAC 1-48	N	04-115	27 IR 3339	

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A	04-246	*ETR (28 IR 230)
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N	04-239	*ETR (28 IR 218)
N	04-240	*ETR (28 IR 219)
N	04-242	*ETR (28 IR 223)
N	04-243	*ETR (28 IR 224)
N	04-244	*ETR (28 IR 226)
R	04-249	*ETR (28 IR 227)
N	04-250	*ETR (28 IR 227)
N	04-251	*ETR (28 IR 228)
N	04-265	*ETR (28 IR 613)
N	04-266	*ETR (28 IR 614)
N	04-280	*ETR (28 IR 972)
N	04-281	*ETR (28 IR 973)
N	04-282	*ETR (28 IR 974)
N	04-301	*ETR (28 IR 1186)
N	04-302	*ETR (28 IR 1187)
N	04-303	*ETR (28 IR 1188)
N	04-304	*ETR (28 IR 1189)
N	04-305	*ETR (28 IR 1191)
N	04-306	*ETR (28 IR 1192)

Natural Resources Commission

N	04-205	*ERR (28 IR 214)
R	04-245	*ETR (28 IR 230)
		*ERR (28 IR 214)
R	04-247	*ETR (28 IR 230)
R	04-257	*ETR (28 IR 615)
N	04-258	*ETR (28 IR 615)
N	04-259	*ETR (28 IR 615)
N	04-260	*ETR (28 IR 616)
N	04-262	*ETR (28 IR 616)
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N	04-285	*ETR (28 IR 981)
N	04-307	*ETR (28 IR 1192)
N	04-308	*ETR (28 IR 1194)
N	04-314	*ETR (28 IR 1194)
N	04-315	*ETR (28 IR 1195)

Tax Review, Indiana Board of

N	04-261	*ETR (28 IR 612)
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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
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, 2004. Final rules published before that date have been incorporated into the 2005 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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WORKFORCE DEVELOPMENT, DEPARTMENT OF

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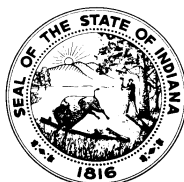
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